Federal Register

11–1–07 Thursday
Vol. 72 No. 211 Nov. 1, 2007

Pages 61791–62104

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 72 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Wednesday, November 14, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

Printed on recycled paper.

Contents

Federal Register

Vol. 72, No. 211

Thursday, November 1, 2007

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 72, No. 211

Thursday, November 1, 2007

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 245

[CIS No. 2420–07; Docket No. USCIS–2007–0047]

RIN 1615–AB62

Removal of Receipt Requirement for Certain H and L Adjustment Applicants Returning From a Trip Outside the United States

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: This rule removes the requirement that certain H and L nonimmigrants returning to the United States following a trip abroad must present a receipt notice for their adjustment of status applications to avoid having such applications deemed abandoned. The purpose of this narrow change is to remove an unnecessary documentation requirement from the regulations that the Department of Homeland Security has determined causes an undue burden on H and L nonimmigrants.

DATES: *Effective Date:* This rule is effective November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Carol Vernon, Regulations and Product Management Division, Domestic Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, Room 2034, Washington, DC 20529, telephone (202) 272–8350.

SUPPLEMENTARY INFORMATION:

I. Background

Travel outside the United States for an alien who has filed Form I–485, ''Application to Register Permanent Residence or Adjust Status,'' to obtain lawful permanent resident status under section 245 of the Immigration and Nationality Act (INA), 8 U.S.C. 1255, may adversely affect that application unless the alien takes certain steps before the trip. Most applicants must obtain permission from U.S. Citizenship and Immigration Services (USCIS) to travel prior to the trip, a process referred to as ''advance parole.'' *See* 8 CFR 212.5 (c) and (f). For these applicants, departing the United States without advance parole while their adjustment of status applications are pending results in automatic abandonment of the applications and constitutes grounds for denial. 8 CFR 245.2(a)(4)(ii)(A) & (B).

However, some applicants do not need to obtain advance parole prior to departing from the United States. 8 CFR 245.2(a)(4)(ii)(C) & (D). These are applicants who are permitted by statute to maintain a nonimmigrant status while they seek to obtain permanent resident status. *See* INA section 214(h), 8 U.S.C. 1184(h). This rulemaking applies to such applicants with respect to two qualifying nonimmigrant classifications: H–1 and L–1 (including dependents, H–4 and L–2). *See* INA section 101(a)(15)(H) and (L), 8 U.S.C. 1101(a)(15)(H) and (L) (describing H and L nonimmigrant classifications); 8 CFR 214.2(h) and (l). Both nonimmigrant classifications are employment-based. H–1 nonimmigrants include the H–1B classification for ''specialty occupation'' workers and the H–1C classification for certain registered nurses. *See* 8 CFR 214.2(h)(1)(ii)(A) and (B). L–1 nonimmigrants include the L–1A classification for certain intracompany transferees who are managers or executives, and the L–1B classification for ''specialized knowledge'' workers. *See* 8 CFR 214.2(l)(ii)(A).

Under current regulations, adjustment of status applicants maintaining H or L nonimmigrant status who depart the United States will not be deemed to have abandoned their applications if they did not obtain advance parole prior to departure. However, upon return to the United States, they must demonstrate to the immigration officer at the port of entry that they:

- Remain eligible for H–1/H–4 or L–1/L–2 nonimmigrant status;
- Will resume employment with the same employer for which they had previously been authorized to work as an H–1 or L–1 nonimmigrant (not applicable to H–4 or L–2 nonimmigrants);
- Are in possession of a valid H–1/H–4 or L–1/L–2 nonimmigrant visa (if a visa is required); and
- Are in possession of the original receipt notice for the application for adjustment of status, Form I–797, ''Notice of Action'' (issued by USCIS).

See 8 CFR 245.2(a)(4)(ii)(C). Preserving the pendency of an adjustment of status application in this manner does not apply to H–1/H–4 or L–1/L–2 nonimmigrants who are under exclusion, deportation, or removal proceedings. In such cases, the Executive Office for Immigration Review of the Department of Justice has jurisdiction over the adjustment of status application and 8 CFR 245.2(a)(4)(ii)(A) governs the effect of travel abroad on those applications.

Because of its varying workload, USCIS recognizes that it is not always able to ensure immediate issuance and mailing of Form I–797 receipt notices upon receipt of an adjustment of status application. At times, USCIS therefore may experience delays in processing and issuing the receipt. This situation places H–1B/H–4 or L–1/L–2 nonimmigrants who are awaiting a Form I–797 receipt notice, but wish to travel outside the United States while their adjustment of status application is pending, in the difficult position of having to decide whether to cancel a planned trip or risk denial of the adjustment application as a result of the departure. Either option would result in hardship to the alien and his or her dependents that the Department of Homeland Security (DHS) finds is unduly burdensome and unnecessary. This is because it renders otherwise qualifying adjustment applications abandoned notwithstanding the fact that the information provided by presentation of the receipt (evidence of filing of an adjustment application) is already available to DHS. An alien whose adjustment of status application is deemed abandoned for failing to present a Form I–797 receipt notice upon readmission to the United States resulting in a denial of the application would be forced to incur the time and expense involved in filing a new adjustment application.

Section 214(h) of the INA, 8 U.S.C. 1184(h), establishing the H–1/H–4 and

L–1/L–2 nonimmigrant's ability to maintain nonimmigrant status while pursuing permanent resident status, is broad and places no documentary restrictions on such ability. Further, DHS has determined, in light of advances in database technology, that the removal of the Form I–797 receipt requirement will not have any adverse impact on its responsibilities to ensure control over aliens seeking admission to the United States. Such aliens must establish eligibility for admission, in any case, before DHS permits them to reenter the United States. In addition, DHS creates a record of its inspection of the alien, including the alien's application for admission.

II. Regulatory Changes

This rule amends 8 CFR 245.2(a)(4)(ii)(C) to remove the requirement that an H–1/H–4 or L–1/L–2 nonimmigrant present an original of the Form I–797 receipt notice for a pending adjustment of status application upon readmission to the United States following a trip abroad in order to avoid abandonment of the adjustment of status application as a result of the departure. This rule makes no other changes to 8 CFR 245.2(a)(4)(ii)(C).

III. Rulemaking Requirements

DHS finds that this rule relates to internal agency management, procedure, and practice and therefore is exempt from the public comment requirements of the Administrative Procedure Act (APA) under 5 U.S.C. 553(b)(A). This rule does not alter substantive criteria by which USCIS will approve or deny applications or determine eligibility for any immigration benefit. Instead, this rule relieves a document presentation requirement for certain applicants for immigration benefits. Specifically, this rule removes the requirement that H–1/H–4 and L–1/L–2 nonimmigrants present a Form I–797 receipt notice for their adjustment of status applications upon readmission to the United States after a trip abroad in order to avoid having their applications abandoned. This document presentation requirement is unnecessary since it concerns information that is already available to DHS. This final rule merely eliminates an unnecessary burden on these arriving aliens and streamlines agency management of its processes. As a result, DHS is not required to provide the public with an opportunity to submit comments on the subject matter of this rule.

Moreover, DHS finds that good cause exists under 5 U.S.C. 553(b)(B) to make the rule effective upon publication in the **Federal Register** without prior notice and public comment on the grounds that delaying implementation of this rule to allow for public comment would be impracticable and contrary to the public interest. As a result of USCIS's July 17, 2007, announcement that it would accept employment-based Forms I–485 filed by aliens whose priority dates are current under Department of State Visa Bulletin No. 107, USCIS received an unprecedented volume of employment-based applications for adjustment of status, including those filed by H and L nonimmigrants. Because of the recent surge in such filings, it will take several weeks for USCIS to enter the necessary data and issue Form I–797 receipt notices for employment-based adjustment of status applications. Therefore, it is important for this rule to take effect as soon as possible to avoid undue hardship on applicants who may need travel outside the United States prior to receiving the receipt notice.

In addition, no substantive rights or obligations of the affected public are changed by this rule. DHS believes the public will welcome this change. The public needs no time to conform its conduct so as to avoid violation of these regulations because the rule relieves a requirement of the existing regulations. Further, this rule will have no adverse impact on DHS' adjudicatory responsibilities or ability to track the foreign travel of affected persons since DHS already records the admission of all nonimigrants. For these reasons, this rule is effective immediately under 5 U.S.C. 553(d)(1) and (3).

This rule relates to internal agency management, and, therefore, is exempt from the provisions of Executive Order Nos. 12630, 12988, 13045, 13132, 13175, 13211, and 13272. This rule is not considered by DHS to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Therefore, it has not been reviewed by the Office of Management and Budget. Further, this action is not a proposed rule requiring an initial or final regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* In addition, this rule is not subject to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. Ch. 17A, 25, or the E-Government Act of 2002, 44 U.S.C. 3501, note.

Finally, under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule does not affect any information collections, reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

■ Accordingly, part 245 of chapter 1 of title 8 of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

■ 2. Section 245.2 is amended by revising paragraph (a)(4)(ii)(C) as follows:

§ 245.2 Application.

(a) * * *

(4) * * *

(ii) * * *

(C) The travel outside of the United States by an applicant for adjustment of status who is not under exclusion, deportation, or removal proceeding and who is in lawful H–1 or L–1 status shall not be deemed an abandonment of the application if, upon returning to this country, the alien remains eligible for H or L status, is coming to resume employment with the same employer for whom he or she had previously been authorized to work as an H–1 or L–1 nonimmigrant, and, is in possession of a valid H or L visa (if required). The travel outside of the United States by an applicant for adjustment of status who is not under exclusion, deportation, or removal proceeding and who is in lawful H–4 or L–2 status shall not be deemed an abandonment of the application if the spouse or parent of such alien through whom the H–4 or L–2 status was obtained is maintaining H–1 or L–1 status and the alien remains otherwise eligible for H–4 or L–2 status, and, the alien is in possession of a valid H–4 or L–2 visa (if required). The travel outside of the United States by an applicant for adjustment of status, who is not under exclusion, deportation, or removal proceeding and who is in lawful K–3 or K–4 status shall not be deemed an abandonment of the application if, upon returning to this country, the alien is in possession of a valid K–3 or K–4 visa and remains eligible for K–3 or K–4 status.

* * * * *

Dated: October 15, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–21506 Filed 10–31–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS–2007–0024]

RIN 0583–AD25

Eligibility of Chile to Export Poultry and Poultry Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is adding Chile to the list of countries eligible to export poultry and poultry products to the United States. Reviews by FSIS of Chile's laws, regulations, and inspection implementation show that its poultry inspection system requirements are equivalent to the relevant provisions of the Poultry Products Inspection Act (PPIA) and its implementing regulations.

With this final rule, poultry and poultry products processed in certified Chilean establishments may be exported to the United States. All such products will be subject to reinspection at United States ports-of-entry by FSIS inspectors.

DATES: *Effective Dates:* December 3, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Sally White, Director, International Equivalence Staff, Office of International Affairs; (202) 720–6400.

SUPPLEMENTARY INFORMATION:

Background

The Food Safety and Inspection Service (FSIS) is amending its poultry products inspection regulations to add Chile to the list of countries eligible to export poultry and poultry products to the United States (9 CFR 381.196).

Statutory Basis for Proposed Action

Section 17 of the PPIA (21 U.S.C. 466) prohibits importation into the United States of slaughtered poultry, or parts or products thereof, of any kind unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient that renders them unhealthful, unwholesome, adulterated, or unfit for human food. Under the PPIA and the regulations that implement it, poultry products imported into the United States must be produced under standards for safety, wholesomeness, and labeling accuracy that are equivalent to those of the United States. Section 381.196 of Title 9 of the CFR sets out the procedures by which foreign countries wanting to export poultry and poultry products to the United States may become eligible to do so.

Section 381.196(a) provides that a foreign country's poultry inspection system must include standards equivalent to those of the United States, and that the legal authority for the inspection system and its implementing regulations must also be equivalent to those of the United States. Specifically, a country's regulations must impose requirements equivalent to those of the United States with respect to: (1) Ante-mortem and post-mortem inspection; (2) official controls by the national government over plant construction, facilities, and equipment; (3) direct and continuous supervision of slaughter activities, where applicable, and product preparation by official inspection personnel; (4) separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; and (6) official controls over condemned product.

The foreign country's inspection system must ensure that establishments preparing poultry or poultry products for export to the United States, and their products, comply with requirements equivalent to those of the PPIA and the regulations promulgated by FSIS under the authority of that statute. The foreign country certifies the appropriate establishments as having met the required standards. The country must satisfy FSIS that the certifications it issues are reliable before FSIS will grant approval to the country to export poultry or poultry products to the United States (9 CFR 381.196). To assess the reliability of the foreign country's certifications, FSIS evaluates the country's inspection system and performs ongoing reviews of that system. To ensure that products imported into the United States are safe, wholesome, and properly labeled and packaged, FSIS randomly re-inspects and samples those products before they enter the United States.

In addition to meeting the certification requirements, a foreign country's inspection system must be evaluated by FSIS before eligibility to export poultry or poultry products to the United States can be granted. This evaluation consists of two processes: A document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to effect its inspection program. To help the country in organizing its material, FSIS gives the country questionnaires asking for detailed information about the country's inspection practices and procedures in five risk areas. These five risk areas, which are the focus of the evaluation, are sanitation, animal disease, slaughter/processing, residues, and enforcement. FSIS evaluates the information to verify that the critical points in the five risk areas are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an on-site review is scheduled using a multi-disciplinary team to evaluate all aspects of the country's inspection program, including laboratories and individual establishments within the country. The process of determining equivalence is described fully on the FSIS Web site at *http://www.fsis.usda.gov/regulations_&_policies/equivalence_process/index.asp*.

The PPIA and the regulations that implement it require that foreign countries be listed as eligible in the Code of Federal Regulations. FSIS must do rulemaking to list a country as eligible. Countries found eligible to export poultry or poultry products into the United States are listed in the poultry inspection regulations at 9 CFR 381.196(b). Once listed, it is the responsibility of the eligible country to certify that establishments meet the requirements to export poultry or poultry products to the United States, and to ensure that products from these establishments are safe, wholesome, and not misbranded.

Evaluation of the Chilean Inspection System for Poultry and Poultry Products

In response to a request from Chile for approval to export poultry and poultry products to the United States, FSIS conducted a review of Chile's poultry slaughter inspection system to determine whether it is equivalent to the U.S. poultry inspection system. First, FSIS compared Chile's poultry inspection laws and regulations with U.S. requirements. The Agency concluded that the requirements contained in Chile's poultry slaughter inspection laws and regulations are equivalent to the PPIA and to the regulations that FSIS has adopted under the PPIA to effect that statute.

FSIS then conducted an on-site review of Chile's poultry slaughter inspection system in operation from August 9 through 18, 2005. The FSIS review team concluded that, as implemented, Chile's poultry slaughter standards and procedures are equivalent to those of the United States. As a result, FSIS published a proposed rule (FSIS–2006–0030) in the **Federal Register** of February 26, 2007 (72 FR 8293–8296), that would add Chile to the list of countries eligible to export poultry and poultry products to the United States.

One comment to the proposed rule noted a deficiency that FSIS had found in its 2005 onsite audit of Chile's inspection system—that Chile was not conducting species verification testing as required—and questioned how, given that deficiency, FSIS could find Chile's system equivalent. On May 10, 2007, FSIS replied to this question through a **Federal Register** document (FSIS–2007–0016) providing **SUPPLEMENTARY INFORMATION** and re-opening the comment period for the proposed rule (72 FR 26567) so that the public could comment on the new information made available, with comments to be received by May 25, 2007. In this **Federal Register** document, FSIS noted that Chile had immediately committed to remedying the deficiency and had documented the steps that it had taken to implement species verification testing. FSIS evaluated the documentation provided by Chile and became confident that Chile has sufficient controls in place to ensure that species verification testing is being performed. FSIS documentation of the materials submitted by Chile to satisfy the species verification requirement for poultry can be found online as an addendum to the 2005 FSIS audit report on Chile's poultry inspection system at *http://www.fsis.usda.gov/regulations_&_policies/Foreign_Audit_Reports/index.asp*.

Comments on the Proposal

The Agency received a total of 13 comments on the proposed rule. All comments received were in response to the proposed rule published February 26, 2007. FSIS did not receive any additional comments to the May 10, 2007, **Federal Register** document that re-opened the comment period on the proposal.

All comments supported the proposal except one that questioned whether FSIS import reinspection would be adequate to prevent public health threats from entering the United States from Chile.

With this final rule in effect, any poultry and poultry products exported to the United States from Chile will be subject to reinspection by FSIS at the ports-of-entry for transportation damage, labeling, proper certification, general condition, and accurate count. FSIS will also conduct other types of inspection, including examination of products for defects and sampling and laboratory analysis of products for chemical residues or for microbiological contamination. Products that pass reinspection will be stamped with the official U.S. mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be refused entry and must be re-exported, destroyed, or converted to animal food. Thus, FSIS import reinspection is more than adequate to prevent products that present a public health threat from entering the U.S.

Furthermore, the FSIS process to determine the equivalence of a country's meat or poultry inspection system is independent from any animal health status determination that may be made for the same country by USDA's Animal and Plant Health Inspection Service (APHIS). The APHIS declaration regarding animal health or disease status, however, also determines whether a country can export product to the U.S., as well as the types of products that would be eligible. Even though a foreign country is listed in FSIS regulations as eligible to export poultry and poultry products to the U.S., those poultry products must also comply with all other U.S. requirements before entry. Before a shipment of poultry or poultry products may be presented for reinspection at the port-of entry by FSIS, it must have first met the requirements of both U.S. Customs and Border Protection and APHIS.

APHIS is responsible for keeping foreign animal diseases out of the United States. Under Title 9, Part 94 of the Code of Federal Regulations (9 CFR Part 94), APHIS sets forth restrictions on the importation of any fresh, frozen, and chilled meat and meat products, poultry and poultry products, and edible products from countries in which certain animal diseases exist. APHIS can independently restrict an eligibility listing through a ''regionalization'' process (9 CFR Part 92—Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions). Those products that APHIS has restricted from entering the United States because of animal disease conditions in the country of origin will be refused entry before reaching an FSIS import inspection facility.

FSIS and APHIS work closely together to ensure that all poultry and poultry products imported into the United States comply with the regulatory requirements of both agencies. In 1985, FSIS and APHIS signed a memorandum of understanding (MOU) in which both agencies agreed to cooperate in meeting their respective needs relative to information exchange of disease surveillance, diagnostic testing, investigations, trace backs, and animal and public health emergencies to achieve their related objectives of reducing the spread of animal diseases, and of providing a wholesome and economical food supply. The MOU is updated periodically to ensure that it addresses areas of importance to both agencies. In accord with this MOU, FSIS and APHIS established procedures for communication between the two agencies regarding the inspection, handling, and disposition of imported meat and poultry products. APHIS and FSIS communicate regularly to ensure that products APHIS has restricted from entering the United States because of animal disease concerns are not imported into the United States.

FSIS notes that APHIS has found no current evidence of animal disease of consequence in Chile. For all these reasons, FSIS believes that sufficient controls are in place to ensure that poultry and poultry products processed in Chile will not pose a risk in the U.S.

As a country eligible to export poultry and poultry products to the United States, the government of Chile must certify to FSIS those establishments that wish to export such products to the United States and that operate in accordance with these requirements. FSIS will retain the right to verify that the establishments certified by Chile's government are meeting the U.S. requirements and will verify that Chile's inspection system meets U.S. requirements through annual audits. Therefore, based on its review of the Chilean system and its consideration of the comments on the proposal, FSIS concludes that Chile's poultry inspection system is equivalent to that of the U.S., and therefore, Chilean poultry establishments that have been certified by the Chilean government are eligible to begin exporting product to the U.S.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866 by the Office of Management and Budget (OMB) and has been determined to be not significant for purposes of E.O. 12866. This rulemaking will add Chile to the list of countries eligible to export poultry and poultry products to the United States.

Economic Impact Analysis

This rule was designated as non-significant. It is expected that approximately five establishments in Chile will be exporting poultry and poultry products to the U.S. Chile expects to export raw young chicken breast (deboned) products, starting in 2007 with 5,000 Metric Tons (MT) and reaching an estimated 12,000 MT in 2010. These estimates are based on Chile's actual and future production capacity and its decision to maintain an increasing presence in the export market. For comparison, FSIS estimated, based on data from the USDA Agricultural Marketing Service (AMS) and the National Agricultural Statistics Service (NASS), that in 2005 the U.S. produced about 1,444,000 MT of raw young chicken breast (deboned) products. Chile's estimated initial exports to the U.S. in 2007 should represent about three-tenths of one percent (5,000 MT/1,444,000 MT) of the U.S. domestic production of raw young chicken breast (deboned) products, in 2005. Further, if Chile's exports to the U.S. reach, in 2010, the estimate of 12,000 MT of raw young chicken breast (deboned) products, these imports will represent about eight-tenths of one percent (12,000 MT/1,444,000 MT) of the U.S. domestic production of raw young chicken breast (deboned) products in 2005.

Expected benefits from this type of final rule will accrue primarily to consumers in the form of lower prices. The small volume of trade stimulated by this final rule, however, will likely have little effect on supply and prices. Consumers, apart from any change in prices, would benefit in principle from increased choices at competitive price points in the marketplace.

The costs of this rule will accrue primarily to U.S. producers in the form of greater competition from Chile. Again, it must be noted that the volume of trade stimulated by this rule will be very small, likely having little discernible effect on supply and prices.

General benefits will include increased trade with Chile and the availability to U.S. consumers of a greater quantity of poultry and poultry products. Both nations will benefit from an expansion of trade in poultry and poultry products as part of a wide range of commodities.

Constraints on the expansion of trade in poultry and poultry products between the United States and Chile are expected to occur mainly in the form of restrictions imposed under U.S. animal health laws. APHIS has agreed to supply FSIS with evaluations and updates of the animal disease status of regions in Chile where establishments likely to export poultry and poultry product to the United States are located.

The additional poultry and poultry product shipments are likely to have only a slight effect on the Agency's assignment of import inspection resources at points of entry on the East and West coasts. It is unlikely, on the basis of current information, that any additional import inspection personnel would need to be hired.

Estimates of benefits and costs of increased trade in poultry and poultry products with Chile are based on data supplied by the FSIS Office of International Affairs and Office of Field Operations; Foreign Agricultural Service (FAS) databases and trade reports; Economic Research Service (ERS) databases, reports, and analyses; Agricultural Marketing Service (AMS) databases, reports, and analyses; National Agricultural Statistics Service (NASS) databases, reports, and analyses; and Census Bureau databases and reports. Standard economic analytical techniques were used in estimating effects of this rulemaking.

The major source of uncertainty in estimating the effects of this final rule is in forecasting the number of establishments likely to be certified by Chile to export poultry and poultry products to the United States. Other, less important, sources of uncertainty include imprecision in the economic data consulted, e.g. estimates of demand and supply elasticities and probable errors in multi-year forecasts of prices for the poultry and poultry product commodities that would be regulated under the final rule.

Effect on Small Entities

This final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This final rule will add Chile to the list of countries eligible to export poultry and poultry products to the United States. The volume of trade stimulated by this rule will be very small and will have minimal effect on poultry and poultry products supplies and prices.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this final rule is adopted:

(1) All State and local laws and regulations that are inconsistent with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Requirements

No new paperwork requirements are associated with this final rule. Foreign countries wanting to export poultry and poultry products to the United States are required to provide information to FSIS certifying that their inspection systems effect standards equivalent to those of the United States, and that the legal authority for the systems and their implementing regulations are equivalent to those of the United States. FSIS collects this information one time only. FSIS gave Chile questionnaires asking for detailed information about the country's inspection practices and procedures to assist that country in organizing its materials. This information collection was approved under OMB number 0583–0094. The final rule contains no other paperwork requirements.

E-Government Act Compliance

The Food Safety and Inspection Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this proposed rule, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2007_Interim_&_Final_Rules_Index/index.asp.*

The Regulations.gov Web site is the central online rulemaking portal of the United States Government. It is offered as a public service to increase participation in the Federal Government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov/.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update is also available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service that provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

List of Subjects in 9 CFR Part 381

Imported Products.

■ For the reasons set out in the preamble, FSIS is amending 9 CFR part 381 as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

§ 381.196(b) [Amended]

■ 2. Section 381.196(b) is amended by adding Chile in alphabetical order to the list of countries in paragraph (b).

Done at Washington, DC, on October 29, 2007.

Alfred V. Alamanza,

Administrator.

[FR Doc. E7–21511 Filed 10–31–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0076; Directorate Identifier 2007–NM–241–AD; Amendment 39–15246; AD 2007–22–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200, A330–300, A340–200, A340–300, A340–500, and A340–600 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing 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:

During MLG (main landing gear) lubrication, a crack was found visually in the MLG rib 6 aft bearing forward lug on one A330 in service aircraft. * * * This condition, if not detected and corrected, could affect the structural integrity of the MLG attachment.

Failure of the forward lug could result in collapse of the MLG upon landing. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 16, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 16, 2007.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD as of February 15, 2007 (72 FR 4416, January 31, 2007).

We must receive comments on this AD by December 3, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On January 23, 2007, we issued AD 2007–03–04, Amendment 39–14915 (72 FR 4416, January 31, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–03–04, it has been determined that the previous modification/repair (interference fit bushings) cannot be considered as terminating action to the inspection because of the unknown root cause of the cracking.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Emergency Airworthiness Directive 2007–0247 R1-E, dated September 7, 2007, corrected October 4, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During MLG (main landing gear) lubrication, a crack was found visually in the MLG rib 6 aft bearing forward lug on one A330 in service aircraft. The crack had extended through the entire thickness of the forward lug at approximately the 4 o'clock position (when looking forward). Despite intensive investigation so far, Airbus has not been able to determine the root cause of this single event. This condition, if not detected and corrected, could affect the structural integrity of the MLG attachment.

Emergency Airworthiness Directive (EAD) 2006–0364–E [which corresponds to FAA AD 2007–03–04] was issued to require repetitive detailed visual inspections of the LH (left hand) and RH (right hand) wing MLG rib 6 aft bearing lugs. This new EAD, which supersedes EAD 2006–0364–E, is issued to:

—Expand the applicability to all A330 and A340 series aircraft, because the interference fit bushes cannot be considered as a terminating action, owing to unknown root cause; and
—Add a second parameter quoted in Flight Hours (FH) to the inspection interval in order to reflect the aircraft utilisation in service.

Failure of the forward lug could result in collapse of the MLG upon landing. If any crack is detected, the corrective action is contacting Airbus for repair instructions and replacing the cracked MLG rib 6 fitting before further flight. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletins A330–57–3096, Revision 02, dated August 13, 2007; A340–57–4104, Revision 02, dated September 5, 2007; and A340–57–5009, Revision 01, dated August 13, 2007. 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 AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the 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.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because during an MLG maintenance task for lubrication, a crack was found visually in the wing MLG rib 6 aft bearing forward lug on one in-service A330 airplane. The crack had extended through the entire thickness of the forward lug at the 4 o'clock position. The root cause has not been determined and therefore the previous modification/repair (interference fit bushings) cannot be considered as terminating action to the inspections. Inspections are now necessary on all Model A330–200, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes, both with and without a previous modification/repair installed. Failure of the MLG attachment could result in MLG collapse upon landing. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the ADDRESSES section. Include ''Docket No. FAA–2007–0076; Directorate Identifier 2007–NM–241–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

Authority for This Rulemaking

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

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

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.

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 39–14915 (72 FR 4416, January 31, 2007) and adding the following new AD:

2007–22–10 Airbus: Amendment 39–15246. Docket No. FAA–2007–0076; Directorate Identifier 2007–NM–241–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 16, 2007.

Affected ADs

(b) This AD supersedes AD 2007–03–04.

Applicability

(c) This AD applies to all Airbus Model A330–200, A330–300, A340–200, A340–300, A340–500, and A340–600 series 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 continued airworthiness information (MCAI) states:

During MLG (main landing gear) lubrication, a crack was found visually in the MLG rib 6 aft bearing forward lug on one A330 in service aircraft. The crack had extended through the entire thickness of the forward lug at approximately the 4 o'clock position (when looking forward). Despite intensive investigation so far, Airbus has not been able to determine the root cause of this single event. This condition, if not detected and corrected, could affect the structural integrity of the MLG attachment.

Emergency Airworthiness Directive (EAD) 2006–0364–E was issued to require repetitive detailed visual inspections of the LH (left hand) and RH (right hand) wing MLG rib 6 aft bearing lugs. This new EAD, which supersedes EAD 2006–0364–E, is issued to:

—Expand the applicability to all A330 and A340 series aircraft, because the interference fit bushes cannot be considered as a terminating action, owing to unknown root cause; and

—Add a second parameter quoted in Flight Hours (FH) to the inspection interval in order to reflect the aircraft utilisation in service.

Failure of the forward lug could result in collapse of the MLG upon landing. If any crack is detected, the corrective action is contacting Airbus for repair instructions and replacing the cracked MLG rib 6 fitting before further flight.

Restatement of the Requirements of AD 2007–03–04

(f) Unless already done, do the following actions in accordance with the instructions defined in the applicable service bulletin listed in Table 1 of this AD. After the effective date of this AD, the following Airbus Service Bulletins must be used, as applicable: A330–57–3096, Revision 02, dated August 13, 2007; A340–57–4104, Revision 02, dated September 5, 2007; and A340–57–5009, Revision 01, dated August 13, 2007.

TABLE 1.—AIRBUS SERVICE INFORMATION

Airbus Service Bulletin	Revision level	Date
A330–57A3096	Original	December 5, 2006.
A330–57A3096	02	August 13, 2007.
A340–57A4104	Original	December 5, 2006.
A340–57A4104	02	September 5, 2007.
A340–57A5009	Original	December 5, 2006.
A340–57–5009	01	August 13, 2007.

(1) For airplanes identified in paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this AD: Within 60 months since first flight, or 14 days after February 15, 2007 (the effective date of AD 2007–03–04), whichever occurs later, perform a detailed visual inspection of the LH (left-hand) and RH (right-hand) wing MLG rib 6 aft bearing lugs (forward and aft) to detect any cracks on the two lugs.

(i) Airbus Model A330–200 and A330–300 series airplanes, except those on which Airbus modification 49353 has been embodied in production, or Airbus Service Bulletin A330–57–3082 has been embodied in service on both wings, and except those that have been repaired on both wings as per Airbus UK Limited Repair Drawing R572–56230, or Airbus A330 Structural Repair Manual 57–26–13, page block 201.

(ii) Airbus Model A340–200 and A340–300 series airplanes, except those on which Airbus modification 49353 has been embodied in production, or Airbus Service Bulletin A340–57–4088 has been embodied in service on both wings, and except those that have been repaired on both wings as per Airbus UK Limited Repair Drawing R572–56230, or Airbus A340 Structural Repair Manual 57–26–13, page block 201.

(iii) Airbus Model A340–500 and A340–600 series airplanes, except those on which Airbus modification 50040 or 51585 has been embodied in production.

(2) If any crack is detected, contact Airbus immediately and proceed with the replacement of the MLG rib 6 before further flight. Repeat the inspection required by paragraph (f)(1) of this AD thereafter as specified in paragraph (g)(2) of this AD.

(3) If no crack is detected, repeat the inspection required by paragraph (f)(1) of this AD at intervals not to exceed the applicable interval specified in paragraph (f)(3)(i), (f)(3)(ii), or (f)(3)(iii) of this AD, until the first inspection required by paragraph (g)(2) of this AD is done. Repeat the inspection thereafter as specified in paragraph (g)(2) of this AD. If any crack is detected during the repeat inspections, before further flight, apply the corrective action mentioned in paragraph (f)(2) of this AD as applicable.

(i) 300 flight cycles (FC) for Model A330 airplanes.

(ii) 200 FC for Model A340–200 and A340–300 airplanes.

(iii) 100 FC for Model A340–500 and A340–600 airplanes.

New Requirements of This AD: Actions and Compliance

(g) Unless already done, do the following actions.

(1) For airplanes not affected by paragraph (f)(1) of this AD: Within 60 months since first flight, or 14 days after the effective date of this AD, whichever occurs later, do the action required by paragraph (f)(1) of this AD in accordance with the instructions defined in Airbus Service Bulletin A330–57–3096, Revision 02, dated August 13, 2007; A340–57–4104, Revision 02, dated September 5, 2007; or A340–57–5009, Revision 01, dated August 13, 2007; as applicable. If any crack is detected during any inspection required by this paragraph, before further flight do the actions required by paragraph (f)(2) of this AD.

(2) For all airplanes: Repeat the detailed visual inspection for cracking of the LH and RH wing MLG Rib 6 bearing lugs (forward and aft) at the applicable interval specified in Table 2 of this AD, except as provided by paragraph (g)(3) of this AD. If any crack is detected during any inspection required by this paragraph, before further flight do the actions required by paragraph (f)(2) of this AD.

Note 1: Replacement of the MLG Rib 6 fitting in accordance with paragraph (f)(2) of this AD does not constitute terminating action for the inspection requirements of this AD.

Note 2: If the MLG Rib 6 fitting is replaced in accordance with paragraph (f)(2) of this AD, the first inspection threshold for the replaced MLG Rib 6 is 5 years after such replacement.

(3) For airplanes that have been inspected before the effective date of this AD in accordance with the applicable service bulletin specified in Table 3 of this AD: Apply the new interval specified in Table 2 of this AD from the first inspection, scheduled in accordance with the requirements of paragraph (f)(3) of this AD, that occurs after the effective date of this AD.

TABLE 2.—REPETITIVE INSPECTION INTERVALS

Model	Interval (whichever occurs first)
A330–200 series airplanes	300 flight cycles or 1,500 flight hours.
A330–300 series airplanes	300 flight cycles or 900 flight hours.
A340–200 series airplanes	200 flight cycles or 800 flight hours.
A300–300 series airplanes, except WV27	200 flight cycles or 800 flight hours.
A340–300 series airplanes, WV27	200 flight cycles or 400 flight hours.
A340–500 and –600 series airplanes	100 flight cycles or 500 flight hours.

TABLE 3.—EARLIER REVISIONS OF SERVICE BULLETINS

Airbus Service Bulletin	Revision Level	Date
A330–57A3096	Original	December 5, 2006.
A330–57A3096	01	April 18, 2007.
A340–57A4104	Original	December 5, 2006.
A340–57–4104	01	August 13, 2007.
A340–57A5009	Original	December 5, 2006.

(4) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A330–57A3096, Revision 01, dated April 18, 2007; and A340–57–4104, Revision 01, dated August 13, 2007; are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

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. Send information to ATTN: Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

(4) *Special Flight Permits:* We are not allowing special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199).

Related Information

(i) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Emergency Airworthiness Directive 2007–0247 R1–E, dated September 7, 2007 (corrected October 4, 2007), and the service bulletins listed in Table 4 of this AD, for related information.

TABLE 4.—RELATED SERVICE BULLETINS

Airbus Service Bulletin	Revision level	Date
(1) A330–57–3096	02	August 13, 2007.
(2) A340–57–4104	02	September 5, 2007.
(3) A340–57–5009	01	August 13, 2007.

Material Incorporated by Reference

(j) You must use the service bulletins identified in Table 5 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 5.—MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A330–57A3096	Original	December 5, 2006.
A330–57–3096, excluding Appendix 01	02	August 13, 2007.
A340–57A4104	Original	December 5, 2006.
A340–57–4104, excluding Appendix 01	02	September 5, 2007.
A340–57A5009	Original	December 5, 2006.
A340–57–5009, excluding Appendix 01	01	August 13, 2007.

(1) The Director of the Federal Register approved the incorporation by reference of the service information identified in Table 6 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 6.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A330–57–3096, excluding Appendix 01	02	August 13, 2007.
A340–57–4104, excluding Appendix 01	02	September 5, 2007.
A340–57–5009, excluding Appendix 01	01	August 13, 2007.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information identified in Table 7 of this AD on February 15, 2007 (72 FR 4416, January 31, 2007).

TABLE 7.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Airbus Service Bulletin	Revision level	Date
A330–57A3096	Original	December 5, 2006.
A340–57A4104	Original	December 5, 2006.
A340–57A5009	Original	December 5, 2006.

(3) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(4) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or 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/cfr/ibr-locations.html*.

Issued in Renton, Washington, on October 24, 2007.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–21394 Filed 10–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400–AC38

[Public Notice 5977]

Exchange Visitor Program—Fees and Charges for Exchange Visitor Program Services

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: On June 22, 2007, the Department of State published a Proposed Rule to revise its regulations regarding fees and charges for Exchange Visitor Program services. These proposed regulations are adopted without change. The fees permit the Department to recoup the cost of providing such Exchange Visitor Program services.

DATES: *Effective Date:* This rule is effective December 3, 2007.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547; 202–203–5096 or e-mail at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION: The Department published a proposed rule, Public Notice 5837 at 72 FR 34419–34424, June 22, 2007, with a request for comments, removing regulations presently set forth at 22 CFR Part 62, Subpart H—''Fees'', § 62.90 and adding a new § 62.17 (''Fees and Charges'') containing all of the fees and charges for Exchange Visitor Program services. The rule was discussed in detail in Public Notice 5837, as were the Department's reasons for the other changes to the regulations. The Department received eight comments and is now promulgating a final rule with no changes from the proposed rule.

Comment Analysis

The Department received eight comments. One was from a private organization, and due to rising costs found the new fees wholly acceptable. One comment had no relevance to the proposed rule. Six comments were from academic institutions that opined that the new fees may prove problematic due to their institutional budget cycles. The Department is of the opinion that the new redesignation fee of $1,748, due every two years, imposes little or no hardship on the U.S. higher education community and notes that only six of more than 900 such institutions responded to this notice.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business.

This rule is not subject to the notice-and-comment rulemaking provisions of the Administrative Procedure Act or any other act and, accordingly it does not require analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272, section 3(b).

The Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UFMA), Public Law 104–4, 109 Stat. 48, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of $100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

The Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866: Regulatory Review

The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the proposed regulation justify its costs. The Department does not consider the rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order, since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the proposed regulations in light of sections 3(a) and 3(b)(2) of Executive Order No. 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards and reduce burden.

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 62

Cultural Exchange Programs.

■ Accordingly, 22 CFR part 62 is amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The Authority citation for part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Pub. L. 105–277, Div. G, 112 Stat. 2681–761 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Pub. L. 107–56, Sec. 416, 115 Stat. 354; and Pub. L. 107–173, 116 Stat. 543.

■ 2. Section 62.17 is added to read as follows:

§ 62.17 Fees and charges.

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 9701 must be submitted as directed by the Department and must be in the amount prescribed by law or regulation.

(b) *Amounts of fees.* The following fees are prescribed for Fiscal Years 2008–2009 (October 1, 2007—September 30, 2009):

(1) For filing an application for program designation and/or redesignation (Form DS–3036)—$1,748.

(2) For filing an application for extension beyond the maximum duration, change of category, reinstatement, reinstatement-update SEVIS status, ECFMG-sponsorship authorization, and permission to issue—$246.

Subpart H [Removed]

■ 3. Remove Subpart H consisting of § 62.90.

Dated: September 20, 2007.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7–21472 Filed 10–31–07; 8:45 am]

BILLING CODE 4710–05–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2007–8]

Registration of Claims to Copyright–Renewals

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office is publishing a final rule amending its rules governing applications for registration of claims for renewal term of copyright. The regulations take into account the fact that, since January 1, 2006, all applications for renewal have necessarily related to works which are subject to automatic renewal and, thus, are already in their renewal terms, making impossible any 28th–year registration of claims to the renewal term.

EFFECTIVE DATE: November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

On April 4, 2007, the Copyright Office published a notice of proposed rulemaking seeking comment on amending its rules governing applications for registration of claims to the renewal term of copyright. 72 FR 16306 (April 4, 2007). The proposed regulations take into account the fact that, since January 1, 2006, all applications for renewal have necessarily related to works which are subject to automatic renewal and, thus, are already in their renewal terms, making impossible any 28th–year registration of claims to the renewal term.

The 1976 Copyright Act, 17 U.S.C. 101, et. seq., essentially carried over the copyright renewal system of the 1909 Copyright Act for all works subsisting in federal copyright protection before January 1, 1976. Section 304(a) of Title 17 as originally enacted in 1976 provided that renewal registration had to be made during the 28th year of the original term of copyright in order to secure the additional (then 47) years of renewal–term protection. 17 U.S.C. 304(a) (1976).

In 1992, Congress enacted a revision of section 304(a) of Title 17 which made renewal copyright automatic for works first published or registered from January 1, 1964, through December 31, 1977. This amendment allowed the renewal right to vest without registration of: [a] the claim to copyright during the original, 28—year term; or, [b] the claim to renewal copyright during the year immediately prior to the beginning of the renewal term (i.e., during the 28th year); or, [c] the claim to renewal copyright during the renewal term. Pub. L. No. 102–307, 106 Stat. 264, enacted June 26, 1992. In order to encourage renewal registration and provide a public record of renewal rights, however, Congress also amended section 304(a) to provide certain benefits to a party who undertook the renewal registration within the 28th year of the original term of copyright. These benefits for works with timely renewal registrations include:

1. A certificate of registration constitutes prima facie evidence as to

the validity of the copyright during its renewal term and of the facts stated in the certificate. 17 U.S.C. 304(a)(4)(B).

2. A derivative work prepared under the authority of a grant of a transfer or license of copyright in a work made before the expiration of the original term of copyright may not continue to be used under the terms of the grant during the renewal term without the authority of the owner of the renewal copyright. 17 U.S.C. 304(a)(4)(A).

3. A renewal copyright vests upon the beginning of the renewal term in the party who was entitled to claim the renewal of copyright at the time the application was made as provided under 17 U.S.C. 304(a)(2)(A)(i) and (B)(i).

Registration of a claim to the renewal term has also been possible since the 1992 amendment at any time during the renewal term, i.e., at any time beyond the 28th year of the original term of copyright. 17 U.S.C. 304(a)(3)(A)(ii). Such renewal registration may be made whether or not an original–term registration was previously made. If no original–term registration was made, the renewal term applicant must provide information, under the provision of 17 U.S.C. 409 (11), regarding the original term of copyright. Such information must demonstrate that the work submitted for renewal registration complies with all requirements of the 1909 Act with respect to the existence, ownership, or duration of the copyright for the original term of the work. The Addendum to Form RE has been used to provide this information to the Copyright Office.

The 1992 amendment further provided that, where no renewal registration has been made in the name of a party identified as entitled to the renewal right in the statute at 304(a)(1)(B) and (C), an application form may be filed at any time during the renewal term by any successor or assignee of such statutorily–enumerated party. Section 304(a)(3).

II. Renewal Registration Procedures

The Copyright Office has developed a revised application form for the registration of renewal claims. The revised Form RE, as well as the revised Form RE/CON (for use when additional information must be supplied) and Form RE/ADDENDUM (to be filed if the work, or the collective work in which it was first published, was not registered during the original term) is available on the Copyright Office website at www.copyright.gov as well as through postal mail upon request. Any requests to the Copyright Office for application forms for registration of claims to the renewal term will be filled with the newly revised form; the previously used forms will be obsolete, and the new forms must be used to file such renewal claims.

One of the major changes to the form facilitates the filing of applications by successors or assignees of the statutory renewal claimants listed at 17 U.S.C. 304(a)(1)(B) and (C). During the past several years, those successors or assignees of statutory claimants who wished to file an application to the renewal term, 17 U.S.C. 304(a)(3)(A)(ii), had to seek advice from the Copyright Office because of the lack of appropriate application–form instructions for the successor or assignee situation; this has been addressed in the revised application form.

III. Summary of Revisions to Regulation at 37 CFR 202.17

The revision of this regulatory section, 202.17, is extensive to the rule and reorders much of the information which previously appeared within this section. The most important change in information concerned the end of the 28th—year renewal registration possibility.

1. Section 202.17(a) more specifically explains the relevant statutory changes of 1992 regarding renewal rights and sets out the distinction between pre–1964 works and post–1964 works with respect to renewal registration.

2. Section 202.17(b) expands the list of terms defined to include ''statutory claimant,'' ''assignee and successor,'' and ''vest'' as those terms relate specifically to the provisions of this renewal registration regulation.

3. Section 202.17(c) explains the relevant time periods for both original term registration and renewal term registration and their optional character as they are set out in the 1992 revision of section 304(a) of Title 17.

4. Section 202.17(d) explains the benefits of 28th—year renewal registration under the 1992 revision to section 304(a) of Title 17 and indicates that such benefits have no longer been available since January 1, 2006, because the regime of 28th—year renewal registration has ended.

5. Section 202.17(e) sets out the parties entitled to the renewal right under 17 U.S.C. 304(a)(1)(B) and (C). This section also:

a. clarifies that, in any derivative work which may be the subject of a renewal application, a renewal claim may be filed only in the new matter, revisions, or changes incorporated into that derivative work and which form the basis of the protected authorship for purposes of registration.

b. clarifies that renewal claims for a work may, under certain circumstances, be filed under the posthumous work category and also under an individual claimant category but with the Copyright Office's taking no position as to which of such claims may be adjudicated to be valid.

Two parties claiming renewal copyright who take different positions as to whether a particular work falls under the specific definition of ''posthumous'' which Congress adopted from Bartok may, thus, file separate and competing claims in such a situation.

c. explains several situations concerning the filing of a renewal registration claim where an executor or a party appointed to fulfill such duties may be the appropriate filer of a renewal claim or where conflicting claims between an administrator of a will and the author's next of kin may be accepted by the Copyright Office.

The Office has also added a phrase, for purposes of § 202.17(e)(2)(iii)(C), qualifying that an executor appointed under a will must still be acting in that capacity at the time of registration when a renewal claim is filed. The phrase ''if still acting in that capacity at the time of registration'' is added to help claimants make decisions concerning their renewal submissions where an executor of a will may or may not be able to act in the filing of a renewal claim. For the uncertainties and varying situations concerning the presence or absence of an executor or administrator and the possibility of the next of kin's claiming as an appropriate section 304 statutory class, *see e.g Silverman v. Sunrise Pictures Corp.*, 290 F. 804 (2d Cir.), *cert. denied*, 262 U.S. 758 (1923); *Gibran v. Alfred A. Knopf, Inc.*, 153 F. Supp. 854 (S.D.N.Y. 1957), *aff'd sub. nom., Gibran v. National Committee of Gibran*, 255 F.2d 121 (2d Cir.), *cert. denied*, 358 U.S. 828 (1958); *Capano Music v. Myers Music, Inc.*, 605 F. Supp. 692 (S.D.N.Y. 1985).

6. Section 202.17(f) clarifies the situations in which successors and assignees of the section 304(a)(1)(B) and (C) statutory renewal claimants may file applications for renewal registration.

7. Section 202.17(g) indicates the information necessary on a renewal application form for a work for which a previous, original–term registration has been made.

8. Section 202.17(h) indicates the information necessary on a renewal application form and the required accompanying deposit materials in situations for works where no original–term registration has been made. Concerning the Form RE/Addendum to be used in this situation of no original–

term registration, regulatory § 202.17(h)(3)(vii) explains that the applicant must provide within the application an averment that all authorized copies of the work which were publicly distributed in the United States or elsewhere before March 1, 1989, carried a statutorily correct copyright notice.

The Office received no comments from the public in response to its notice of a proposed rulemaking concerning these amendments to the regulations governing renewals. Hence, the Office is issuing a final rule incorporating the proposed revisions.

List of Subjects in 37 CFR Part 202

Claims to copyright, Copyright, Registration requirements, Renewals.

■ In consideration of the foregoing, 37 CFR part 202 is amended as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408, 702.

■ 2. Section 202.17 is revised to read as follows:

§ 202.17 Renewals

(a) *General.* (1) This section concerns renewal for copyrights originally secured from January 1, 1964, through December 31, 1977, either by publication with the required copyright notice or by registration as an unpublished work. Renewal registration for these works is optional. As provided in Pub. L. No. 102–307, 106 Stat. 264, enacted June 26, 1992, renewal registration made during the last year of the original 28–year term of copyright differs in legal effect from renewal registration made during the 67–year extended renewal term. In the latter instance, the copyright is renewed automatically at the expiration of the original 28–year term. In the former instance, renewal by registration during the last year of the original 28–year term vested the renewal copyright in the statutory claimant living on the date of registration.

(2) Works for which copyright was secured before 1964 are governed by the provisions of 17 U.S.C. 304(a) in effect prior to the 1992 date of enactment of Pub. L. No. 102–307. The copyrights in such works could have been renewed by registration only within the last calendar year of the original 28–year term of copyright protection. If renewal registration was not made during that period of time, copyright protection was lost when the original term of copyright expired and cannot be regained.

(3) Works restored to copyright by the Uruguay Round Agreements Act are governed in their copyright term of protection by Pub. L. No. 103–465, 108 Stat. 4809, 4976 (December 8, 1994). Under 17 U.S.C. 104A(a)(1)(A) and (B), as amended, any work in which copyright is restored subsists for the remainder of the term of copyright that the work would have been otherwise granted in the United States. Such term includes the remainder of any applicable renewal term.

(4) Automatic restoration of copyright in certain foreign works that were in the public domain in the United States may have occurred under the Uruguay Round Agreements Act and may be protected by copyright or neighboring rights in their ‘‘source country,’’ as defined at 17 U.S.C. 104A(h)(8).

(b) *Definitions.* (1) For purposes of this section, the terms assignee and successor, as they pertain to 17 U.S.C. 304(a)(3)(A)(ii), refer to a party which has acquired the renewal copyright in a work by assignment or by other means of legal succession from the statutory claimant [as that claimant is defined in 17 U.S.C. 304(a)(1)(B) and (C)] in whom the renewal copyright vested but in whose name no renewal registration was previously made.

(2) For purposes of this section, a work has been copyrighted when it has been published with a proper copyright notice or, in the case of an unpublished work, when it has been registered for copyright.

(3) For purposes of this section, the term posthumous work means a work that was unpublished on the date of the death of the author and with respect to which no copyright assignment or other contract for exploitation of the work occurred during the author's lifetime.

(4) For purposes of this section, the term statutory claimant means:

(i) A party who was entitled to claim copyright for the renewal term at the time renewal registration was made either as a proprietary claimant, 17 U.S.C. 304(a)(2)(A)(i), or as a personal claimant, 17 U.S.C. 304(a)(2)(B)(i), if registration was made during the original term of copyright; or

(ii) If the original copyright term expired, a party who was entitled to claim copyright for the renewal term as of the last day of the original term of copyright as either a proprietary or a personal claimant, 17 U.S.C. 304(a)(2)(A)(ii) and (a)(2)(B)(ii).

(5) For purposes of this section, the term to vest means to give a fixed, non–contingent right of present or future enjoyment of the renewal copyright in a work. If renewal registration was made during the 28th year of the original term of copyright, the renewal copyright vested in the party or parties entitled to claim such copyright at the time of registration as provided by 17 U.S.C. 304(a)(1)(B) and (C). Although the vested right may have been determined by registration during the 28th year of the original term, the exercise of such right did not commence until the beginning of the renewal term, as provided in 17 U.S.C. 304(a)(2). If renewal registration was not made during the 28th year, the renewal copyright automatically vested upon the beginning of the renewal term in the party or parties entitled to claim such copyright on the last day of the original term as provided by 17 U.S.C. 304(a)(2)(A)(ii) and (B)(ii).

(c) *Time limits: original term and renewal term registration.* (1) Under 17 U.S.C. 304(a), prior to its amendment of June 26, 1992, a registration for the original term of copyright must have been made during the 28 years of that original term, and a renewal registration must also have been made during the 28th year of that term. Pub. L. No. 102–307, 106 Stat. 264 (June 26, 1992) amended section 304(a) for works originally copyrighted from January 1, 1964, through December 31, 1977, and provided for optional original–term registration and optional renewal registration. 17 U.S.C. 304(a)(2), (a)(3) and 409(11). For such works, claims to renewal copyright could have been registered during the last year of the original term but such registration was not required in order to enjoy statutory protection during the renewal term. 17 U.S.C. 304(a)(3)(B).

(2) A renewal registration can be made at any time during the renewal term. 17 U.S.C. 304(a)(3)(A)(ii). If no original–term registration was made, renewal registration remains possible; but the Register may request information, under 17 U.S.C. 409(11), regarding the original term of copyright. Such information must demonstrate that the work complies with all requirements of the 1909 Act with respect to the existence, ownership, or duration of the copyright for the original term of the work. The Form RE/Addendum is used to provide this information.

(3) Renewal registration is currently available for works copyrighted from January 1, 1964, through December 31, 1977. Under the provisions of 17 U.S.C. 304(a)(3)(A)(ii), renewal registration may be made any time during the 67–year renewal term for such works according to the procedure indicated in paragraph (h) of this section. Such renewal registration is optional and is

not a condition of the subsistence of the copyright for the 67–year renewal term. 17 U.S.C. 304(a)(3)(B). In the case of such works for which no registration was made during the original term of copyright, renewal registration may be made by submission of a Form RE/ Addendum. The Addendum, an adjunct to the renewal form, concerns the facts of first publication for a work and assures the Copyright Office that the work as it existed in its original term of copyright was in compliance with the 1909 copyright law, 17 U.S.C. 1, et. seq. (1909 Act, in effect through December 31, 1977), whose provisions govern such works.

(d) *Benefits of 28th–year renewal registration*. Prior to January 1, 2006, renewal registration was available during the 28th year of the original term of copyright for works copyrighted from January 1, 1964, through December 31, 1977. As provided in Pub. L. No. 102–307, 106 Stat. 264, registration made during the 28th year of the original term of copyright provided the following benefits to the registrant:

(1) The certificate of registration constituted prima facie evidence as to the validity of the copyright during its renewal term and of the facts stated in the certificate. 17 U.S.C. 304(a)(4)(B).

(2) A derivative work prepared under the authority of a grant of a transfer or license of copyright in a work made before the expiration of the original term of copyright could not continue to be used under the terms of the grant during the renewal term without the authority of the owner of the renewal copyright. 17 U.S.C. 304(a)(4)(A).

(3) The renewal copyright vested upon the beginning of the renewal term in the party entitled to claim the renewal of copyright at the time the application was made as provided under 17 U.S.C. 304(a)(2)(A)(i) and (B)(i).

(e) *Statutory parties entitled to claim copyright for the renewal term under Section 304(a).* (1) Renewal claims must be registered in the name of the party or parties entitled to claim copyright for the renewal term as provided in paragraphs (e)(2) through (4) of this section and as specified in 17 U.S.C. 304(a). If a work was a new version of a previously published or registered work, renewal registration may be claimed only in the new matter.

(2) If the renewal claim was submitted during the last, i.e., the 28th, year of the original term of copyright, the claim had to be registered in the name[s] of the statutory claimant[s] entitled to claim the renewal copyright on the date on which the claim was submitted to the Copyright Office. If the renewal claim is submitted during the sixty–seven year extended renewal term, the renewal claim can be registered only in the name[s] of the statutory claimant[s] entitled to claim the renewal on the last day (December 31) of the original term of copyright. These eligible renewal claimants are listed below:

(i) The person who, on the applicable day, was the copyright proprietor is the appropriate renewal claimant in any posthumous work or any periodical, encyclopedia, or other composite work upon which the copyright was originally secured by the proprietor;

(ii) The person who, on the applicable day, was the copyright proprietor is the appropriate claimant in any work copyrighted by a corporate body (otherwise than as assignees or licensees of the individual author), or by an employer for whom such work was made for hire;

(iii) For any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the appropriate claimants, in descending order of eligibility, are the person who, on the applicable day, was:

(A) The author(s) of the work, if still living;

(B) The widow(er) and/or child(ren) of the author, if the author was deceased on the applicable day;

(C) The author's executor(s), if still acting in that capacity on the applicable day, provided the author had a will and neither the author, nor any widow(er) or child of the author is still living; or

(D) The author's next of kin, in the absence of a will and if neither the author nor any widow, widower or child of the author is living.

(3) The provisions of paragraphs (e)(1) and (2) of this section are subject to the following qualification: Notwithstanding the definition of ''posthumous work'' in paragraph (b)(4) of this section, a renewal claim may be registered in the name of the proprietor of a work, as well as in the name of the appropriate claimant under paragraph (e)(2)(iii) of this section, in any case in which a contract for exploitation of the work but no copyright assignment in the work has occurred during the author's lifetime. However, registration by the Copyright Office in this case should not be interpreted as evidencing the validity of either claim.

(4) The provisions of paragraphs (e)(2)(iii)(C) and (D) of this section are subject to the following qualifications:

(i) In any case where:

(A) The author has left a will which names no executor;

(B) The author has left a will which names an executor who cannot or will not serve in that capacity; or

(C) The author has left a will which names an executor who has been discharged upon settlement of the estate, removed before the estate has been completely administered, or is deceased at the time of the renewal registration submission, the renewal claim may be registered either in the name of an administrator *cum testamento annexo* (administrator c.t.a.) or an administrator *de bonis non cum testamento annexo* (administrator d.b.n.c.t.a.) so appointed by a court of competent jurisdiction.

(ii) In any case described in paragraph (e) of this section, except in the case where the author has left a will without naming an executor and a court–appointed administrator c.t.a. or administrator d.b.n.c.t.a. is in existence at the time of renewal registration, the renewal claim also may be registered in the name of the author's next of kin. However, registration by the Copyright Office of conflicting renewal claims in such a case should not be interpreted as evidencing the validity of either claim.

(f) *Successors/assignees entitled to file an application for the renewal term under Section 304(a)*. The provisions of paragraph (e) of this section are subject to the following qualifications:

(1) Where no renewal registration has been made in the name of a person or entity identified in paragraphs (e)(2)(i), (ii) and (iii) of this section, a renewal application may be filed at any time during the renewal term by any successor or assignee of such person or entity.

(2) In such cases described in paragraph (f)(1)(i) of this section, the renewal application must identify the party in whom the renewal copyright vested; must indicate the basis upon which copyright for the renewal term vested in that party; must identify the party who is the successor or assignee of the statutory claimant under 17 U.S.C. 304(a)(3); and, must give the manner by which such successor/ assignee secured the renewal copyright.

(3) When such a claim has been filed by a successor or assignee in the name of the statutory claimant as described in paragraph (e)(2)(i), (ii) and (iii) of this section, generally no subsequent claims may be filed by other successors or assignees whose rights are derived from the same statutory claimant. If a public record of renewal ownership is sought by other successors or assignees of the same statutory claimant, the document of transfer of the renewal copyright, either the renewal in its entirety or in

part, may be recorded in the Copyright Office.

(4) Where a successor or assignee claims the renewal right from the same statutory claimant as does another successor or assignee, the Copyright Office may inquire concerning the situation and, if appropriate, may allow adverse renewal claims from the successors/assignees to be placed on the public record. In such cases, correspondence between the parties filing competing renewal claims and the Copyright Office will be, as always, maintained within Office records and subject to public inspection according to regulations found at 37 CFR 201.2.

(g) *Application for renewal registration for a work registered in its original 28–year term.* (1) Each application for renewal registration shall be submitted on Form RE. All forms are available free of charge via the Internet by accessing the Copyright Office homepage at http://www.copyright.gov. Copies of Form RE are also available free upon request to the Public Information Office, United States Copyright Office, Library of Congress, 101 Independence Avenue, Washington, DC 20559–6000.

(2) (i) An application for renewal registration may be submitted by any eligible statutory renewal claimant as specified in paragraph (e) of this section or by the duly authorized agent of such claimant, or by the successor or assignee of such claimant as provided under paragraph (f) of this section or by the duly authorized agent of such successor or assignee.

(ii) An application for renewal registration shall be accompanied by the required fee as set forth in 37 CFR 201.3. The application shall contain the information required by the form and its accompanying instructions, and shall include a certification. The certification shall consist of:

(A) A designation of whether the applicant is the renewal claimant, or a successor or assignee, or the duly authorized agent of such claimant or of such successor or assignee (whose identity shall also be given);

(B) The handwritten signature of such claimant, successor or assignee, or agent, accompanied by the typewritten or printed name of that person;

(C) A declaration that the statements made in the application are correct to the best of that person's knowledge; and

(D) The date of certification.

(3) Once a renewal registration has been made, the Copyright Office will not accept another application for renewal registration on behalf of the same renewal claimant.

(h) *Renewal with addendum registration for an unregistered work.* (1) *General.* For published works copyrighted from January 1, 1964, through December 31, 1977, where no registration was made during the original term of copyright and where renewal registration is sought during the 67–year renewal term, the Form RE/Addendum must be used to provide information concerning the original term of copyright. The Form RE/Addendum requires a separate fee and the deposit of one copy or phonorecord of the work as first published (or identifying material in lieu of a copy or phonorecord). The effective date of registration for a renewal claim submitted on a Form RE/Addendum is the date the Copyright Office receives an acceptable completed application, the required fees, and an acceptable deposit for the work.

(2) *Time Limits.* A renewal claim accompanied by an Addendum to Form RE may be filed at any time during the 67–year renewal term.

(3) *Content.* The Form RE/Addendum must contain the following information:

(i) The title of the work;

(ii) The name of the author(s);

(iii) The date of first publication of the work;

(iv) The nation of first publication of the work;

(v) The citizenship of the author(s) on the date of first publication of the work;

(vi) The domicile of the author(s) on the date of first publication of the work;

(vii) An averment that, at the time of first publication, and thereafter until March 1, 1989 [effective date of the Berne Implementation Act of 1988], all the copies or phonorecords of the work, including reprints of the work, published, i.e., publicly distributed in the United States or elsewhere, under the authority of the author or other copyright proprietor, bore the copyright notice required by the Copyright Act of 1909 and that United States copyright subsists in the work;

(viii) For works of United States origin which were subject to the manufacturing provisions of section 16 of the Copyright Act of 1909 as it existed at the time the work was published, the Form RE/Addendum must also contain information about the country of manufacture and the manufacturing processes; and

(ix) The handwritten signature of the renewal claimant or successor or assignee, or the duly authorized agent of the claimant or of the successor or assignee. The signature shall be accompanied by the printed or typewritten name of the person signing the Addendum and by the date of the signature; and shall be immediately preceded by a declaration that the statements made in the application are correct to the best of that person's knowledge.

(4) *Fees.* Form RE and Form RE/Addendum must be accompanied by the required fee for each form as required in 37 CFR 201.3.

(5) *Deposit requirement.* One copy or phonorecord or identifying material of the work as first published in accordance with the deposit requirements set out in 37 CFR 202.20 and 202.21 is required.

(6) *Waiver of the deposit requirement.* Where the renewal applicant asserts that it is either impossible or otherwise an undue hardship to satisfy the deposit requirements of 37 CFR 202.20 and 202.21, the Copyright Office, at its discretion, may, upon receipt of an acceptable explanation of the inability to submit such copy or identifying material, permit the deposit of the following in descending order of preference. In every case, however, proof of the copyright notice showing the content and location of the notice as it appeared on copies or phonorecords of the work as first published must be included.

(i) A reproduction of the entire work as first published (e.g., photocopy, videotape, audiotape, CD–ROM, DVD are examples of physical media which may hold reproductions of a work as first published). If the work is a contribution to a periodical, a reproduction of only the contribution (including the relevant copyright notice) will suffice.

(ii) A reprint of the work (e.g., a later edition, a later release of a phonorecord, or the like). The reprint must show the copyright notice as it appeared in the same location within the first published copy of the work as well as the exact content of the copyright notice appearing in the first published edition. If the copyrightable content of the reprint differs from that of the first published edition, an explanation of the differences between the two editions is required.

(iii) Identifying material including a reproduction of the greatest feasible portion of the copyrightable content of a work including a photocopy or photograph of the title page, title screen, record label or the like, as first published, and a photocopy or photograph showing the copyright notice content and location as first published. The Copyright Office may request deposit of additional material if the initial submission is inadequate for examination purposes.

Dated: October 4, 2007.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. E7–21115 Filed 10–31–07; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0293; FRL–8490–2]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; VOC Emissions From Fuel Grade Ethanol Production Operations; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, the EPA is withdrawing the September 13, 2007 (72 FR 52286), direct final rule approving the State of Indiana's March 30, 2007, request to revise the Indiana State Implementation Plan (SIP) by adding a volatile organic compound (VOC) rule for fuel grade ethanol production at dry mills. In the direct final rule, EPA stated that if adverse comments were submitted by October 15, 2007, the rule would be withdrawn and not take effect. On October 8, 2007, EPA received a comment. EPA believes this comment is adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed action also published on September 13, 2007 (72 FR 52320). EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 72 FR 52286 on September 13, 2007, is withdrawn as of November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *Rosenthal.steven@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: October 22, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

PART 52—[AMENDED]

■ Accordingly, the amendment to 40 CFR 52.770 published in the **Federal Register** on September 13, 2007 (72 FR 52286) on pages 52288–52289 is withdrawn as of November 1, 2007.

[FR Doc. E7–21526 Filed 10–31–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.114 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Pickens County, South Carolina and Incorporated Areas Docket No.: FEMA–B–7463			
Adams Creek	At the confluence of Oolenoy River	+940	Pickens County (Unincorporated Areas).
	Just Upstream of Anderson Circle	+971	
Betsy Akin Branch	At the confluence with Lake Keowee	+800	Pickens County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the confluence with Lake Keowee.	+ 808	
Brushy Creek	Approximately 2,665 feet downstream of Sheriff Mill Road	+859	Pickens County (Unincorporated Areas), City of Easley.
	Approximately 550 fee upstream of Anzio Street	+982	
Burdine Creek	At the confluence with Georges Creek	+863	Pickens County (Unincorporated Areas).
	Approximately 2,790 feet downstream of Dacusville Hwy	+1,006	
Burdine Creek Tributary	At the confluence with Burdin Creek	+1,006	Pickens County (Unincorporated Areas).
	Approximately 80 feet downstream of Holly Bush Road	+1.010	
Burgess Creek	At the confluence with Weaver Creek	+944	Pickens County (Unincorporated Areas).
	Approximately 1,810 feet downstream of Cricket Drive	+959	
Camp Creek	At the confluence of Twelvemile Creek	+725	Pickens County (Unincorporated Areas), Town of Sixmile.
	Approximately 900 feet southeast of the intersection of Elizabeth Lane and South Main Street.	+997	
Cannon Creek	At the confluence with Twelvemile Creek	+882	Pickens County (Unincorporated Areas).
	Approximately 200 feet upstream of the confluence of Gregory Creek.	+891	
Carmel Creek	Approximately 250 feet downstream of Joyce Road	+825	Pickens County (Unincorporated Areas).
	Approximately 3,620 feet upstream of Wyatt Stewart Road	+957	
Carpenter Creek	At the confluence with South Saluda River	+889	Pickens County (Unincorporated Areas).
	Approximately 1,700 feet downstream of Dalton Road	+1,001	
Carrick Creek	At the confluence of Oolenoy River	+956	Pickens County (Unincorporated Areas).
	Approximately 210 feet upstream of Table Rock Road	+959	
Crow Creek	At the confluence of Lake Keowee	+800	Pickens County (Unincorporated Areas).
	Approximately 2,510 feet upstream of Little Eastatoee Road.	+871	
Doddies Creek	At the confluence with Machine Creek	+863	Pickens County (Unincorporated Areas).
	Approximately 290 feet upstream of Dacusville Hwy	+1,059	
Eastatoe Creek	At the confluence with Lake Keowee	+800	Pickens County (Unincorporated Areas).
	Approximately 340 feet upstream of Lesesne Road	+1,004	
Eighteenmile Creek	Approximately 1,550 feet downstream of the confluence with Eighteenmile Creek Tributary 5.	+714	Pickens County (Unincorporated Areas), City of Clemson, City of Easley.
	Approximately 2,020 feet upstream of Ross Avenue	+989	
Tributary A	Approximately 70 feet upstream of Shaftsbury Road	+795	City of Clemson.
	Approximately 520 feet upstream of Shaftsbury Road	+808	
Tributary 1	Approximately 50 feet upstream of Prince Rainer Road	+798	City of Clemson.
	Approximately 755 feet upstream of Prince Rainer Road	+812	
Tributary 2	Approximately 70 feet upstream of Clarendon Drive	+745	City of Clemson.
	Approximately 1,640 feet upstream of the confluence with Eighteenmile Creek Tributary 6.	+782	
Tributary 3	At the confluence with Eighteenmile Creek Tributary 9	+752	Pickens County (Unincorporated Areas).
	Approximately 1,710 feet upstream of the confluence with Eighteenmile Creek Tributary 9.	+776	
Tributary 4	At the confluence with Eighteenmile Creek	+730	Pickens County (Unincorporated Area).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1,000 feet upstream of Calhoun Memorial Hwy.	+745	
Tributary 5	At the confluence with Eighteenmile Creek	+716	Pickens County (Unincorporated Area), City of Clemson.
	Approximately 1, 890 feet Southwest of the intersection of Moser Trial and Old Shirley Road.	+787	
Tributary 6	At the confluence with Eighteenmile Creek Tributary 2	+757	Pickens County (Unincorporated Area), City of Clemson.
	Approximately 280 feet upstream of Azalea Drive	+775	
Tributary 7	At the confluence with Eighteenmile Creek	+719	Pickens County (Unincorporated Area).
	Approximately 7,585 feet upstream of the confluence with Eighteenmile Creek Tributary 19.	+800	
Tributary 8	At the confluence with Eighteenmile Creek Tributary 2	+751	City of Clemson.
	Approximately 1,595 feet upstream of the confluence with Eighteenmile Creek Tributary 2.	+769	
Tributary 9	At the confluence with Eighteenmile Creek	+737	Pickens County (Unincorporated Area), City of Clemson, Town of Central.
	Approximately 1,510 feet upstream of Fernway Drive	+854	
Tributary 10	At the confluence with Eighteenmile Creek Tributary 2	+751	City of Clemson.
	Approximately 1,040 feet upstream of the confluence with Eighteenmile Creek Tributary 2.	+764	
Tributary 11	At the confluence with Eighteenmile Creek	+747	Pickens County (Unincorporated Area).
	Approximately 5,990 feet upstream of Mill Pine Road	+818	
Tributary 12	At the confluence with Eighteenmile Creek	+809	Pickens County (Unincorporated Area), Town of Liberty.
	Approximately 920 feet upstream of the Railroad crossing	+961	
Tributary 13	At the confluence with Eighteenmile Creek	+842	Pickens County (Unincorporated Area).
	Approximately 3,970 feet upstream of Calhoun Memorial Hwy.	+865	
Tributary 14	At the confluence with Eighteenmile Creek	+874	Pickens County (Unincorporated Area).
	Approximately 3,490 feet upstream of Smith Grove Road	+904	
Tributary 15	At the confluence with Eighteenmile Creek	+885	Pickens County (Unincorporated Areas).
	Approximately 1,230 feet upstream of Smith Grove Road	+914	
Tributary 16	At the confluence with Eighteenmile Creek (Near Easley)	+960	Pickens County (Unincorporated Areas), City of Easley.
	Approximately 880 feet upstream of the confluence with Eighteenmile Creek.	+998	
Tributary 17	At the confluence with Eighteenmile Creek (Near Easley)	+959	Pickens County (Unincorporated Areas), City of Easley.
	Approximately 130 feet upstream of Cherokee Road	+1,017	
Tributary 18	At the confluence with Eighteenmile Creek	+735	Pickens County (Unincorporated Areas).
	Approximately 1,210 feet upstream of the confluence with Eighteenmile Creek.	+752	
Tributary 19	At the confluence with Eighteenmile Creek	+720	Pickens County (Unincorporated Areas).
	Approximately 1,940 feet upstream of the confluence with Eighteenmile Creek Tributary 7.	+727	
Fifteenmile Creek	At the confluence of Eighteenmile Creek	+747	Pickens County (Unincorporated Areas).
	Approximately 2,060 feet upstream of Pine Thicket Road	+829	
Tributary 1	At the confluence with Fifteenmile Creek	+781	Pickens County (Unincorporated Areas).
	Approximately 180 feet upstream of Garvin Road	+802	
Tributary 2	At the confluence with Fifteenmile Creek	+788	Pickens County (Unincorporated Areas).
	Approximately 240 feet upstream of Pine Ticket Road	+804	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Tributary 3	At the confluence with Fifteenmile Creek	+755	Pickens County (Unincorporated Areas).
	Approximately 1,420 feet upstream of the confluence with Fifteenmile Creek.	+773	
Georges Creek	At the confluence with South Saluda River	+796	Pickens County (Unincorporated Areas), City of Easley.
	Approximately 1,025 feet upstream of Hamilton Street	+1,006	
Tributary 1	At the confluence with Georges Creek	+819	Pickens County (Unincorporated Areas), City of Easley.
	Approximately 2,140 feet upstream of Cardinal Drive	+868	
Golden Creek	At the confluence with Twelvemile Creek	+801	Pickens County (Unincorporated Areas), Town of Liberty, Town of Norris.
	Approximately 1,380 feet downstream of Enon Church Road.	+917	
Tributary 1	At the confluence with Golden Creek	+847	Pickens County (Unincorporated Areas), Town of Liberty.
	Approximately 2,140 feet upstream of the confluence with Golden Creek.	+910	
Gowens Creek	At the confluence of Oolenoy River	+923	Pickens County (Unincorporated Areas).
	Approximately 200 feet Downstream of Table Rock Road	+935	
Gregory Creek	At the confluence with Cannon Creek	+891	Pickens County (Unincorporated Areas).
	Approximately 1,410 feet upstream of the confluence with Gregory Creek.	+944	
Hagood Branch	At the confluence with Twelvemile Creek	+931	Pickens County (Unincorporated Areas).
	Approximately 3,090 feet upstream of Hagood Mill Road	+984	
Hamilton Creek	At the confluence with Georges Creek	+828	Pickens County (Unincorporated Areas), City of Easley.
	Approximately 885 feet upstream of Pace Valley Road	+937	
Keowee River	Approximately 3.4 miles downstream of Keowee Dam	+665	Pickens County (Unincorporated Areas).
	Just downstream of Keowee Dam	+675	
Lake Hartwell		+665	Pickens County (Unincorporated Areas), City of Clemson.
Tributary 2	At the confluence with Lake Hartwell	+665	Pickens County (Unincorporated Areas).
	Approximately 1,940 feet upstream of West Queen Street	+671	
Lake Keowee		+800	Pickens County (Unincorporated Areas).
Little Crow Creek	At the confluence with Lake Keowee	+800	Pickens County (Unincorporated Areas).
	Approximately 990 feet upstream of Little Crow Creek Road.	+832	
Little Crow Creek Tributary	At the confluence with Little Crow Creek	+822	Pickens County (Unincorporated Areas).
	Approximately 1,620 feet upstream of Mile Creek Road	+896	
Little Eastatoe Creek	At the confluence with Eastatoe Creek	+805	Pickens County (Unincorporated Areas).
	Approximately 1,020 feet upstream of the confluence with Little Eastatoe Creek Tributary.	+1,015	
Little Eastatoe Creek Tributary	At the confluence with Little Eastatoe Creek	+1,013	Pickens County (Unincorporated Areas).
	Approximately 550 feet upstream of Sunset Community Way.	+1,038	
Tributary 2	At the confluence with Little Eastatoe Creek Tributary	+1,019	Pickens County (Unincorporated Areas).
	Approximately 540 feet upstream of Sequoyah Way	+1,039	
Little Georges Creek	At the confluence with Georges Creek	+819	Pickens County (Unincorporated Areas).
	Approximately 370 feet upstream of Looper Road	+959	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Machine Creek	At the confluence with South Saluda River	+863	Pickens County (Unincorporated Areas).
	Approximately 340 feet upstream of Childress Road	+1,053	
Mad Dog Branch	At the confluence with Georges Creek	+937	Pickens County (Unincorporated Areas), City of Easley.
	Approximately 310 feet upstream of Turpin Drive	+1,018	
Middle Branch	Approximately 930 feet downstream of Meadow Ridge Road.	+872	Pickens County (Unincorporated Areas), City of Easley.
	Approximately 170 feet upstream of Calhoun Memorial Highway.		
Tributary 6A	Approximately 210 feet downstream of Mossie Smith Road.	+889	Pickens County (Unincorporated Areas), City of Easley.
	Approximately 575 feet downstream of Rose Ann Court	+904	
Tributary 6B	At the confluence with Middle Branch Tributary 6A	+892	Pickens County (Unincorporated Areas), City of Easley.
	Approximately 345 feet upstream of Canvasback Way	+904	
Middle Fork Twelvemile Creek	At the confluence with Twelvemile Creek	+911	Pickens County (Unincorporated Areas).
	Approximately 140 feet downstream of Phoenix Road	+1,046	
Tributary 1	At the confluence with Middle Fork Twelvemile Creek	+932	Pickens County (Unincorporated Areas).
	Approximately 660 feet upstream of Meece Mill Road	+957	
Tributary 2	At the confluence with Middle Fork Twelvemile Creek	+932	Pickens County (Unincorporated Areas).
	Approximately 340 feet upstream of Meece Mill Road	+935	
Mill Creek	At the confluence with Oolenoy River	+968	Pickens County (Unincorporated Areas).
	Approximately 500 feet downstream of Table Rock Road	+979	
Mill Shoals Creek	At the confluence with Middle Fork Twelvemile Creek	+950	Pickens County (Unincorporated Areas).
	Approximately 3,010 feet upstream of the confluence with Middle Fork Twelvemile Creek.	+957	
Molly Branch	At the confluence with Adams Creek	+950	Pickens County (Unincorporated Areas).
	Approximately 4,510 feet upstream of the confluence with Adams Creek.	+982	
Oolenoy River	At the confluence with South Saluda River	+927	Pickens County (Unincorporated Areas).
	Approximately 200 feet upstream of Lake Road	+948	
Tributary 2	At the confluence with Oolenoy River	+946	Pickens County (Unincorporated Areas).
	Approximately 490 feet upstream of Table Rock Road	+955	
Tributary 3	At the confluence with Oolenoy River	+968	Pickens County (Unincorporated Areas).
	Approximately 350 feet upstream of Table Rock Road	+976	
Tributary 5	At the confluence with Oolenoy River	+997	Pickens County (Unincorporated Areas).
	Approximately 1,400 feet upstream of Table Rock Road	+1,046	
Peters Creek	At the confluence with South Saluda River	+893	Pickens County (Unincorporated Areas).
	Approximately 1,930 upstream of Freeman Bridge Road	+902	
Praters Creek	At the confluence with Twelvemile Creek	+857	Pickens County (Unincorporated Areas).
	Approximately 1,670 feet downstream of Morningside Road.	+886	
Raven Branch	At the confluence of Wolf River	+1,004	Pickens County (Unincorporated Areas).
	Approximately 570 feet downstream of Boundary Drive	+1,023	
Reedy Cove Creek	At the confluence with Eastatoe Creek	+962	Pickens County (Unincorporated Areas).
	Approximately 350 feet upstream of Holcombe Hollow	+986	
Rices Creek	At the confluence with Twelvemile Creek	+841	Pickens County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 130 feet upstream of Robert P. Jeannes Road.	+1,018	
Tributary 1	At the confluence with Rices Creek	+945	Pickens County (Unincorporated Areas).
	Approximately 1,170 feet upstream of Griffin Mill Road	+951	
Shoal Creek	At the confluence with Twelvemile Creek	+792	Pickens County (Unincorporated Areas).
	Approximately 2,660 feet upstream of Spur Road	+1,099	
Tributary 1	At the confluence with Shoal Creek	+896	Pickens County (Unincorporated Areas), Town of Sixmile.
	Approximately 330 feet upstream of Liberty Hwy	+966	
Shoal Creek (South Saluda River Tributary).	At the confluence with South Saluda River	+866	Pickens County (Unincorporated Areas).
	Approximately 3,840 feet upstream of Dacusville Hwy	+990	
Tributary 1	At the confluence with Shoal Creek (South Saluda River Tributary).	+866	Pickens County (Unincorporated Areas).
	Just spstream of Hunts Bridge Road	+942	
Tributary 2	At the confluence with Shoal Creek (South Saluda River Tributary).	+872	Pickens County (Unincorporated Areas).
	Approximately 2,170 feet upstream of Raines Road	+904	
Sixmile Creek	At the confluence with Lake Hartwell	+665	Pickens County (Unincorporated Areas), Town of Sixmile.
	Approximately 700 feet upstream of Cedar Hill Road	+1,064	
South Saluda River	At the confluence of Georges Creek	+804	Pickens County (Unincorporated Areas).
	Approximately 1,000 feet upstream of South Saluda Road	+1,127	
Tributary 1	At the confluence of South Saluda River	+862	Pickens County (Unincorporated Areas).
	Approximately 2,520 feet upstream of Edinburgh Lane	+884	
	At the confluence of South Saluda River	+927	Pickens County (Unincorporated Area).
	Approximately 200 feet upstream of Lake Circle	+948	
Three and Twenty Creek	Approximately 4,270 feet downstream of the confluence of Three and Twenty Creek Tributary 1.	+820	Pickens County (Unincorporated Areas).
	Approximately 900 feet downstream of Johnson Road	+868	
Tributary 1	At the confluence of Three and Twenty Creek	+827	Pickens County (Unincorporated Areas).
	Approximately 3,200 feet upstream of Zion School Road	+860	
Tributary 2	At the confluence of Three and Twenty Creek	+828	Pickens County (Unincorporated Areas).
	Approximately 1,355 feet upstream of Johnson Road	+879	
Town Creek	Just upstream of Pumpkintown Hwy	+988	Pickens County (Unincorporated Areas).
	Approximately 1,380 feet upstream of Ivey Hanes Road	+1,124	
Tributary 1	At the confluence Town Creek	+1,007	Pickens County (Unincorporated Areas).
	Approximately 1,190 feet east of the intersection of Capewood Lane and Glassy Mountain Road.	+1,099	
Tributary 2	At the confluence Town Creek	+1,022	Pickens County (Unincorporated Areas).
	Approximately 1,960 feet upstream of Griffin Church Road	+1,099	
Tributary 3	At the confluence Town Creek	+1,055	Pickens County (Unincorporated Areas).
	Approximately 1,680 feet upstream of Fox Squirrel Ridge Road.	+1,060	
Tributary 4	At the confluence Town Creek	+1,029	Pickens County (Unincorporated Areas).
	Approximately 720 feet downstream of Spring Creek Drive	+1,065	
Twelvemile Creek	At the confluence with Lake Hartwell	+665	Pickens County (Unincorporated Areas), City of Clemson.
	At Belle Shoals Road	+869	
	Approximately 80 feet upstream of Log House Road	+1,019	Pickens County (Unincorporated Areas).
	Approximately 500 feet upstream of Hidden Valley Road	+1,061	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Twelvemile Creek Tributary	At the confluence with Lake Hartwell	+665	Pickens County (Unincorporated Areas), City of Clemson.
	At Old Central Road	+665	
Tributary 4	At the confluence with Lake Hartwell	+665	Pickens County (Unincorporated Areas).
	Approximately 4,970 feet upstream of the confluence with Lake Hartwell.	+675	
Tributary 6	At the confluence with Lake Hartwell	+665	Pickens County (Unincorporated Areas).
	Approximately 210 feet upstream of R.C. Edward School Road.	+673	
Tributary 7	At the confluence with Lake Hartwell	+665	Pickens County (Unincorporated Areas).
	Approximately 930 feet upstream of the confluence with Lake Hartwell.	+668	
Tributary 9	At the confluence with Lake Hartwell	+665	Pickens County (Unincorporated Areas).
	Approximately 320 feet southeast of the intersection of Old Cedar Lane and South Main Street.	+994	
Tributary 10	At the confluence with Lake Hartwell	+665	Pickens County (Unincorporated Areas).
	Approximately 1,190 feet upstream of the confluence with Lake Hartwell.	+669	
Tributary 11	At the confluence with Twelvemile Creek	+678	Pickens County (Unincorporated Areas).
	Approximately 690 feet southeast of the intersection of Garvin Street and Maw Bridge Road.	960	
Tributary 13	At the confluence with Twelvemile Creek	+908	Pickens County (Unincorporated Areas).
	Approximately 590 feet upstream of Tiger Drive	+926	
Tributary 14	At the confluence with Twelvemile Creek	+978	Pickens County (Unincorporated Areas).
	Approximately 280 feet upstream of Tommys Trail	+1,023	
Tributary 15	At the confluence with Twelvemile Creek	+982	Pickens County (Unincorporated Areas).
	Approximately 3,030 feet upstream of the confluence of Twelvemile Creek.	+999	
Weaver Creek	At the confluence with Oolenoy River	+937	Pickens County (Unincorporated Areas).
	Approximately 2,570 feet upstream of the confluence with Burgess Creek.	+950	
West Fork Gregory Creek	At the confluence with Gregory Creek	+938	Pickens County (Unincorporated Areas).
	Approximately 660 feet upstream of Windmont Road	+956	
Wolf Creek	At the confluence with Twelvemile Creek	+876	Pickens County (Unincorporated Areas), City of Pickens.
	Just Upstream of Mauldin Lake Road	+916	
	Just downstream of Hideaway Hills Lane	+996	Pickens County (Unincorporated Areas).
	Approximately 260 feet downstream of Pretty Place Drive	+1,046	
Wolf Creek Tributary	At the confluence of Wolf Creek	+951	Pickens County (Unincorporated Areas).
	Approximately 2,500 feet upstream of the confluence with Wolf Creek.	+972	
Woodside Branch	At the confluence with Eighteenmile Creek	+826	Pickens County (Unincorporated Areas), Town of Liberty.
	Approximately 960 feet upstream of the confluence with Woodside Branch Tributary.	+866	
Woodside Branch Tributary	At the confluence with Woodside Branch	+854	Pickens County (Unincorporated Areas), Town of Liberty.
	Approximately 2,180 feet upstream of Burn Hill Road	+882	
Youngs Branch	At the confluence with Middle Fork Twelvemile Creek	+1,005	Pickens County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 840 feet downstream of the confluence of Blacks Branch.	+1,059	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ National American Vertical Datum.

ADDRESSES

Unincorporated Areas of Pickens County

Maps are available for inspection at 222 McDaniels Avenue B–2, Pickens, SC 29670–1419.

Town of Central

Maps are available for inspection at 1067 West Main Street, Central, SC 29630–0549.

City of Clemson

Maps are available for inspection at 1200–3 Tiger Boulevard, Clemson, SC 29633–1566.

City of Easley

Maps are available for inspection at 205 N 1st Street, Easley, SC 29641–0466.

Town of Liberty

Maps are available for inspection at 206 West Front Street, Liberty, SC 29657–0716.

Town of Norris

Maps are available for inspection at 100 East Jamison Street, Norris, SC 29667–0320.

City of Pickens

Maps are available for inspection at 209 Pendleton Street, Pickens, SC 29671–0127.

Town of Sixmile

Maps are available for inspection at 106 South Main Street, Six Mile, SC 29682–0429.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 24, 2007.

David I. Maurstad,

Federal Insurance Administration of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–21538 Filed 10–31–07; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 and CC Docket No. 92–105; DA 07–4178]

IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons With Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; The Use of N11 Codes and Other Abbreviated Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for waiver.

SUMMARY: In this document, the Commission grants in part and denies in part petitions filed by the Voice on the Net (VON) Coalition, United States Telecom Association (USTelecom) and Hamilton Telephone Company (Hamilton) seeking a stay or waiver of certain aspects of the Commission's Voice Over Internet Protocol (VoIP) Telecommunications Relay Services (TRS) Order (*VoIP TRS Order*). The Commission recognizes that, in certain circumstances, there are technical challenges to the ability of interconnected VoIP providers to route 711 abbreviated TRS dialing access calls to an ''appropriate relay center,'' as that term is clarified herein. Similarly, the Commission recognizes that, in certain circumstances, TRS providers receiving 711 emergency calls via an interconnected VoIP service may not be able to determine an appropriate public safety answering point (PSAP) to call in compliance with the TRS emergency call handling requirements. As a result, the Commission finds good cause to grant to interconnected VoIP providers a limited, six month waiver of the requirement that they route 711 calls to an appropriate relay center. The Commission also finds good cause to grant for a period of six months a limited waiver of the TRS emergency call handling requirements, as applied to interconnected VoIP customers, so that TRS providers can implement a means of directing the outbound leg of a 711 call received via an interconnected VoIP service to an appropriate PSAP.

DATES: Effective October 9, 2007.

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

FOR FURTHER INFORMATION CONTACT: Lisa Boehley, Consumer and Governmental Affairs Bureau at (202) 418–7395 (voice), or e-mail: *Lisa.Boehley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, 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). On June 15, 2007, the Commission released the *VoIP TRS Order*, published at 72 FR 43546, August 6, 2007, WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 and CC Docket No. 92–105, FCC 07–110.

This is a summary of the Commission's order in document DA 07–4178, IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; The Use of N11 Codes and other Abbreviated Dialing Arrangements, WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 and CC Docket No. 92–105, adopted October 9, 2007, released October 9, 2007. Document DA 07–4178 also contains a separate public notice seeking comment on the petitions for stay or waiver filed by the VON Coalition, USTelecom, and Hamilton. The full text of document DA 07–4178 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 07–4178 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. 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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document DA 07–4178 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/headlines.html.*

Synopsis

In the VoIP TRS Order, the Commission required interconnected VoIP providers to offer 711 abbreviated dialing access to TRS ''to ensure that TRS calls can be made from any telephone, anywhere in the United States, and that such calls will be properly routed to the appropriate relay center.'' In document DA 07–4178, the Commission clarifies that, in requiring an interconnected VoIP provider to route 711 calls to the ''appropriate relay center,'' the Commission intended to signify the relay center(s) serving the state in which the caller is geographically located, or the relay center(s) corresponding to the caller's last registered address. The Commission concludes that this is the most natural interpretation of the term ''appropriate relay center'' in the context where a 711 call is being transmitted via an interconnected VoIP service as a substitute for the public switched telephone network (PSTN). Clarifying ''appropriate relay center'' in this manner is also essential to ensuring that TRS providers can make the outbound leg of the TRS call to an ''appropriate PSAP.''

Nevertheless, the Commission recognizes that, in certain circumstances, the telephone number associated with a VoIP call will not correspond to the geographic location of the caller. In light of these technical challenges to the ability of interconnected VoIP providers to route 711 calls to an appropriate relay center, the Commission finds good cause to grant a limited waiver of the 711 call handling requirement for interconnected VoIP providers. Although interconnected VoIP providers are required to transmit 711 calls to a relay center, the Commission waives the requirement for a period of six months insofar as it requires them to transmit the 711 call to an appropriate relay center, as clarified above. In doing so, the Commission denies the VON Coalition and USTelecom requests to the extent they seek such relief for a longer period of time. The Commission agrees with the Coalition of Organizations for Accessible Technology (COAT) that ''a brief extension of time for each of these requests may be merited,'' but that ''a two year extension of the FCC's deadline on this matter, one which can affect the life, safety and health of people who rely on TRS for emergency access * * * is not in the public interest.'' The Commission thus grants a limited waiver so that interconnected VoIP providers can implement a means of routing 711 calls, in all cases, to an appropriate relay center.

Similarly, the Commission recognizes that, in certain circumstances, TRS providers receiving 711 emergency calls via an interconnected VoIP service may not be able to determine an appropriate PSAP to call in compliance with the TRS emergency call handling requirements of § 64.604(a)(4) of the Commission's rules. Section 64.604(a)(4) of the Commission's rules requires TRS providers to use a system for incoming emergency calls that ''automatically and immediately'' routes the outbound leg of a TRS call to an appropriate PSAP. Based on the record before the Commission, however, it appears that, under certain circumstances, TRS providers receiving a call via an interconnected VoIP service may be unable to call an appropriate PSAP to respond to an emergency call. Moreover, it appears that certain TRS providers may be unable to access and/or connect to a national database of PSAPs in the event that a TRS provider receives an emergency 711 call from an out-of-state caller, making impossible the automatic routing of such a call to an appropriate PSAP. For these reasons, the Commission grants TRS providers in this situation a limited, six month waiver of the emergency call handling requirements of § 64.604(a)(4) of the Commission's rules insofar as, despite their best efforts, they may not be able to make the outbound call to an appropriate PSAP that corresponds to the caller's actual location.

During the pendency of this waiver, the Commission requires a TRS provider that cannot automatically and immediately route to an appropriate PSAP the outbound leg of an emergency 711 call placed via TTY by an interconnected VoIP user, as required by § 64.604(a)(4) of the Commission's rules, to implement a manual system for doing so, to the extent feasible, that accomplishes the proper routing of emergency 711 calls as efficiently as possible. Further, during this waiver period, the Commission requires interconnected VoIP providers and traditional TRS providers to take steps to remind individuals with hearing or speech disabilities to dial 911 directly (as a text-to-text, TTY-to-TTY call) in an emergency, whether using a PSTN-based service or interconnected VoIP service, rather than making a TRS call via 711 in an emergency. Finally, for the reasons discussed above in limiting the duration of the waiver of the Commission's 711 call handling requirements for interconnected VoIP providers, the Commission believes that the public interest dictates that it limits this waiver relief for TRS providers to a period of six months.

Congressional Review Act

The Commission will not send a copy of document DA 07–4178 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the document is not amending or revising the Commission's existing rules.

Ordering Clauses

Pursuant to Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, and Sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR 0.141, 0.316 and 1.3, document DA 07–4178 is adopted.

The *VON Coalition Petition, USTelecom Petition,* and *Hamilton Petition* are granted in part, and denied in part, as set forth herein.

Federal Communications Commission.

Catherine W. Seidel,

Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. E7–21525 Filed 10–31–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 071023555–7555–01; I.D. 062906A]

RIN 0648–AU46

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Observer Health and Safety

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to enhance the safety of observers and the efficiency of their deployment. The purpose of the final rule is to clarify prohibited actions regarding observers, reinforce that an observer may not be deployed nor stay aboard an unsafe vessel, clarify when a fishing vessel is inadequate for observer deployment and how an owner or operator can resolve discrepancies, clarify when the safety decal requirement applies, and provide for an alternate NMFS safety equipment examination of certain small fishing vessels. This final rule is necessary to maintain and enhance the safety and effectiveness of fisheries observers in carrying out their duties as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the fishery management plans and regulations adopted under the Magnuson-Stevens Act.

DATES: Effective December 3, 2007.

FOR FURTHER INFORMATION CONTACT: Lisa Desfosse at 301–713–2328.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s website at *http://www.gpoaccess.gov/fr/index.html*.

Background

The Magnuson-Stevens Act, as amended (16 U.S.C. 1801 *et seq.*), the Marine Mammal Protection Act, as amended (MMPA) (16 U.S.C. 1361 *et seq.*), and the Atlantic Tunas Convention Act, as amended (ATCA) (16 U.S.C. 971 *et seq.*) authorize the Secretary of Commerce (Secretary) to station observers aboard commercial fishing vessels to collect scientific data required for fishery and protected species conservation and management, to monitor incidental mortality and serious injury to marine mammals and to other species listed under the Endangered Species (ESA), and to monitor compliance with existing Federal regulations. In addition, under the South Pacific Tuna Act of 1988 (SATA) (16 U.S.C. 973 *et seq.*), NMFS may require observers in the South Pacific tuna fishery.

Regulations governing health and safety of observers are codified at 50 CFR 600.725 and 600.746. They were first promulgated as a final rule at 63 FR 27213, May 18, 1998. These amendments apply to any vessel designated to carry an observer as part of a mandatory or a voluntary observer program under the Magnuson-Stevens Act, the MMPA, the ATCA, SPTA, or any other U.S. law.

This final rule clarifies and updates prohibitions; changes paragraph headings to better reflect contents; clarifies communications requirements; requires pre-trip vessel safety checks; clarifies that corrective measures are required prior to an observer being deployed aboard a vessel; adopts an alternate NMFS safety equipment examination using a NMFS Pre-trip Safety Checklist for U.S. Coast Guard (USCG) Category I vessels (vessels less than 26 ft. (8 m)) under certain circumstances when a USCG Commercial Fishing Vessel (CFV) Safety Examination cannot be conducted; and clarifies that observer safety requirements apply from the time a vessel is notified of an observer requirement, rather than on the day the fishing trip is scheduled to begin. This action strengthens the ability of NMFS to assist with observer program compliance issues.

Observer Samples

This final rule revises the prohibitions of § 600.725 to prohibit tampering with or destroying an observer's samples or equipment, or interfering with a NMFS approved observer. This change was necessary because observers reported fishing vessel crews interfering with their sampling programs by throwing samples or equipment overboard or otherwise destroying or tampering with them. The changes also reflect that NMFS observers are now sometimes assigned to shoreside plants.

Observer Safety

Paragraph (b) of § 600.746 addresses observer safety, and the heading is changed accordingly. Paragraph (b) stated that an observer is not required to board, or stay aboard, a vessel that is inadequate or unsafe as described in paragraph (c) of the section. The definition was intended to allow the observer to subjectively decide whether to board. This language could be interpreted to not allow an observer to board a vessel to determine if the vessel is unsafe. The final rule replaces the term ''is not required'' with, ''will not be deployed,'' clarifying the original intent of the regulation that observers not depart in or stay aboard vessels inadequate for observer deployment. Further, the term ''inadequate or unsafe'' is revised to ''inadequate for observer deployment.'' This change clarifies that, while NMFS cannot determine the absolute safety of a vessel, NMFS can require standards of accommodation and safety on a vessel prior to an observer deploying in that vessel.

Proof of Examination

The regulations at § 600.746(c) considered a vessel inadequate or unsafe for carrying an observer unless the vessel's owner or operator can: (1) show proof to NMFS of either a current USCG CFV Safety Examination decal or a USCG certificate of examination; and (2) notify NMFS of that compliance when requested. This rule amends the current regulations to allow the owner or operator to show proof of passing the USCG CFV Safety Examination when the decal may have been lost due to window replacement, other repair, or accident.

Accommodations and Safety Requirements

This final rule updates accommodations requirements at 50 CFR parts 229, 285, 300, 600, 622, 635, 648, 660, and 679. Each NMFS region will provide information to vessel owners/operators in a manner appropriate to that region or fishery, as established by the appropriate Regional Administrator. The rule also clarifies that both the accommodations requirement and the USCG CFV Safety Examination requirement or alternate examination procedure set out in paragraph (h) of this section must be satisfied for the vessel to be considered adequate under the requirements of paragraph (c).

Vessel Requirement

The rule revises § 600.725 to include paragraph (w) ''Any vessel that is carrying one or more observers must maintain safe conditions for the protection of observers including compliance with all U.S. Coast Guard and other applicable rules, regulations, or statutes applicable to the vessel and which pertain to safe operation of the vessel.''

Vessel Pre-Trip Safety Check

The regulations at § 600.746(c)(3) encourage, but do not require, observers to use the pre-trip safety check, including the check for USCG required safety equipment. A vessel may have met the requirements for issuance of a current USCG CFV Safety Examination decal, or passed an appropriate USCG inspection; however, the equipment required for issuance of the decal or passing of the inspection may not be present or in satisfactory condition prior to the initial deployment of the observer.

This final rule will require that the vessel's captain or the captain's designee accompany the observer in a safety check prior to the initial deployment. The observer will use a checklist that includes the six items listed in the regulation, plus items required by the USCG and added by each observer program, in consultation with USCG, to be fishery area and vessel specific. The vessel's captain or designee must also accompany the observer in a walk through the vessel's spaces to ensure that no obviously hazardous conditions exist about the vessel. This pre-trip check may be incorporated into the vessel safety orientation to be provided by a Federally documented vessel to the observer as required by 46 CFR 28.270.

This final rule also clarifies at § 600.746(f)(5) that an emergency position indicating radio beacon (EPIRB), when required, shall be registered to the vessel at its documented homeport and at § 600.746(f)(6) that survival craft, when required, ''shall have sufficient capacity to accommodate the total number of persons, including the observer(s), that will embark on the voyage.''

Corrective Measures

This final rule revises the current language of § 600.746(d) corrective measures to require that the vessel owner/operator selected to carry an observer must comply with the safety requirements when the vessel is notified. Additionally, this final rule clarifies that in a voluntary program, it is the choice of the owner/operator of the vessel whether to correct safety discrepancies and allow the vessel to carry an observer.

Alternate NMFS Safety Equipment Examination

The current regulations do not allow for an alternative to the USCG CFV Safety Examination in cases where NMFS observers are required to board smaller vessels in remote areas (primarily in Alaska) in order to carry out their duties. Their remote location precludes them from traveling to a location where a CFV safety examination can be performed, and USCG personnel, in certain circumstances, may not be able to travel to all locations to conduct an examination. This final rule revises § 600.746 to allow a USCG Category I vessel (a vessel less than 26 ft. (8 m.) in length) an alternative method for meeting the safety requirement by passing an alternate NMFS safety equipment examination that is consistent with the USCG CFV Safety Examination standards for USCG Category I vessels. The alternate safety examination would be conducted by a NMFS approved observer, NMFS employee, or an authorized observer provider. This alternate NMFS safety equipment examination (designed in consultation with USCG to be fishery-area-specific) would only be available to USCG Category I vessels in a remote location, and only for a period up to 30 days after date of notification that the vessel is required to carry an observer.

Duration

This final rule revises § 600.746(e) to § 600.746 (h) and amends the language by adding the phrase ''at the time of written or verbal selection of the vessel to carry an observer'' by the observer program. This clarifies that vessels are required to comply with the observer safety requirements at the time their vessel is selected to carry an observer, which may be days or weeks in advance of the actual deployment date of an observer to the selected vessel. This will allow NMFS to check vessels for compliance with the safety requirements prior to the deployment of an observer.

Summary of Comments and Responses

NMFS received several substantive comments from the public. Below are summaries of significant public comments and the NMFS' responses with proposed changes.

Comments Relating to Observer Safety

Comment 1: Safety has improved as a result of the observer health and safety regulations, but some NMFS observer programs have had difficulty requiring vessels to comply with the observer health and safety regulations, e.g., lack of adequate bunk space to accommodate an observer, and/or lack a survival craft of sufficient capacity to accommodate all persons on the vessel, including the observer. We believe the proposed deletions of 50 CFR 600.746(d) and (f) may in fact exacerbate the problem. Regulations that direct NMFS to ensure that vessels take corrective actions to come into compliance with the accommodation and safety requirements, or else not fish, are not only necessary, but should be strengthened. Otherwise, vessels that fail safety examinations may have little incentive to correct deficiencies before fishing. Accordingly, we strongly urge that 50 CFR 600.746(d) and (f) be retained in the Final Rule and fully implemented to ensure that the observer safety regulations achieve their intended effect.

Response: The language contained in 50 CFR 600.746(d) was in conflict with the revised language in 50 CFR 600.746(e), which makes clear that vessels are required to comply with the observer safety requirements from the time the vessel is selected to carry an observer, which may be days or weeks in advance of the actual deployment. The language contained in 50 CFR

600.746(d) was deleted because it could be interpreted to mean compliance is required only immediately prior to the observer boarding the vessel and is inconsistent with the revisions in 50 CFR 600.746(e).

However, NMFS agrees with the comment with regard to the proposed deletion of 50 CFR 600.746(f). NMFS agrees that this provision must be retained to ensure that the observer safety regulations achieve their intended effect and will reinstate this provision.

Comments Relating to Proof of Examination

Comment 2: The proposed rule adds language to paragraph (d)(1), clarifying that the decal must have been issued in the past two years, or at an interval consistent with current Coast Guard regulations. The Commercial Fishing Vessel (CFV) dockside safety examination program was expanded to fish catching vessels by Coast Guard policy only, on a voluntary basis, making the statement partially inaccurate.

Response: NMFS agrees and will add, ''or policy'' so that paragraph (d)(1) will read: '' clarifying that the decal must have been issued in the past two years, or at an interval consistent with current Coast Guard regulations or policy.''

Comments in Relating to Alternate Safety Equipment Examination

Comment 3: Certain NMFS observer programs have been unable to successfully deploy observers on small vessels (<26 feet) that do not have access to USCG examiners in their area. Many of these fishing sites are in very remote areas where USCG examiners are rarely accessible. In these situations, an alternate safety equipment examination performed either by the NMFS certified contract observer, their employer, or a NMFS observer program employee, is reasonable. The proposed regulatory text is vague and could be open to a broader interpretation. It does not reference remote sites; instead it references the unavailability of examiners or the unavailability of transportation to or from an inspection station. It should be clear that this alternate examination is not meant to apply to fishing vessels in more populous areas where fishers may assert they tried to schedule an examination yet could not.

Response: In the preamble, NMFS makes clear that the intent of the proposed rule is to address vessels <26 ft. in remote areas, primarily in Alaska. This is the focus of the regulation, but the regulation still provides flexibility to address other scenarios that may arise in the future in other areas. To further clarify the proposed rule's intent, in the first sentence of 50 CFR 600.746(g), NMFS will insert, ''If a vessel is under 26 ft. (8 m) in length, in a remote location, and NMFS has determined that the USCG cannot provide a USCG Commercial Fishing Vessel Safety Examination...''

Comments Relating to Display or Show Proof

Comment 4: While subparagraphs (3) and (4) adequately address the fish processing vessels and fish tender vessels, respectively, there is no mention of an alternative means to show proof for fish catching vessels.

Response: NMFS agrees with this comment and in § 600.746, will renumber subparagraphs (3) and (4), to (i) and (ii). NMFS will also add, (iii) ''*For vessels not subject to (i) and (ii) above, a dockside examination report form indicating the decal number and date and place of issue*.'' and place (i), (ii), and (iii) under subparagraph (2).

Comment 5: Commercial fishing industry vessels may undergo a safety examination, but are not generally required to be inspected, unless they are over a certain tonnage, also operate as a cargo vessel, or also operate as a small passenger vessel. In such cases they may be issued a certificate of inspection (COI). Currently, we know of no fishing vessels that are required to be inspected.

Response: The intent of subparagraph (d) (3) (4) (modified to (i) and (ii)), is to address alternate means to show proof of a decal for observers deployed on fish processing and tending vessels. The language has been revised to also address fishing vessels, (iii) For vessels not subject to (i) and (ii) above, a dockside examination report form indicating the decal number and date and place of issue.

Classification

NMFS has determined that this final rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

Final Regulatory Flexibility Analysis (FRFA)

Section 603 of the Regulatory Flexibility Act (RFA) requires that NMFS prepare a Final Regulatory Flexibility Analysis (FRFA) summarizing significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA). The agency's response to those comments and changes made to the rule as a result of the comments are below. There were no comments on the IRFA or the economic impacts of the rule. There are no reporting, recordkeeping, or other compliance costs associated with this rulemaking.

Description and Number of Entities Affected

NMFS has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts of $4,000,000 or less, as small businesses. NMFS estimates that approximately 8,925 vessels could be required to carry an observer in NMFS-regulated fisheries. Current, precise data on the number of commercial fishing vessels that are small entities are not presently available because year-to-year participation by such entities in any given fishery is variable, due to economic, regulatory, climatic, and other factors. However, combining the best available data estimates from each of the regional observer programs derived an estimate of 8,755–8,825 vessels.

The rule clarifies an existing NMFS requirement that vessels display a USCG CFV Safety Examination decal. The decal is obtained by passing a free (except to some processor vessels) examination of compliance with USCG safety regulations, that is scheduled at a time convenient to the vessel owner/operator. No disproportionate economic impacts between small and large entities were identified for this action. Furthermore, there are no disproportionate economic impacts among groups of entities based on types of gear, areas fished, or vessel size.

Preferred Alternative

This final rule does not require that vessel operators expend more than the existing rules require (e.g., for the purchase of a larger life raft to accommodate an observer). However, failure of a vessel to comply with this rule may cause loss of fishing time. The cost of a lost fishing day varies among fisheries. For example, an average cost of a day-at-sea across all vessels 40–80 ft in length (i.e., all gears) in the Northeast in 2006 was $895, but this figure would vary in other fisheries, depending upon the value of the fishery, the type of management regime governing that fishery and the degree to which the vessel derives its income from that fishery. The risk of loss of fishing time due to this proposed rule is minimal, because vessel owners are already required to comply with USCG safety regulations and to obtain a USCG

CFV Safety Decal when fishing in a federally permitted fishery that requires observer coverage. Therefore, this rule does not impose any new compliance costs.

''No Action'' and Other Alternatives

Under the ''no action'' alternative to this rule, no new costs would be incurred. However, the difference between the cost of ''no action'' and the cost of the preferred alternative is minimal and NMFS believes that most of the affected vessels already voluntarily follow the USCG safety regulations and comply with the existing NMFS requirement for a USCG CFV Safety Decal when fishing in a federally permitted fishery that requires observer coverage.

A more detailed copy of this analysis is available from NMFS (see ADDRESSES).

List of Subjects in 50 CFR Part 600

Fisheries, Fishery, Fishing vessels, Reporting and recordkeeping requirements.

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

Dated: October 26, 2007.

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 600 is amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, paragraphs (p), (t), and (u) are revised and paragraph (w) is added to read as follows:

§ 600.725 General prohibitions.

* * * * *

(p) Fail to show proof of passing the USCG Commercial Fishing Vessel Safety Examination or the alternate NMFS safety equipment examination, or fail to maintain the vessel safety conditions necessary to pass the examination, when required by NMFS pursuant to § 600.746.

* * * * *

(t) Assault, oppose, impede, intimidate, or interfere with a NMFS-approved observer.

(u)(1) Prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, an observer from conducting his or her duties as an observer; or

(2) Tamper with or destroy samples or equipment.

* * * * *

(w) Fail to maintain safe conditions for the protection of observers including compliance with all U.S. Coast Guard and other applicable rules, regulations, or statutes applicable to the vessel and which pertain to safe operation of the vessel.

■ 3. In § 600.746, paragraphs (b) through (f) are revised and paragraphs (g), (h), and (i) are added to read as follows:

§ 600.746 Observers.

* * * * *

(b) *Observer safety*. An observer will not be deployed on, or stay aboard, a vessel that is inadequate for observer deployment as described in paragraph (c) of this section.

(c) *Vessel inadequate for observer deployment*. A vessel is inadequate for observer deployment if it:

(1) Does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 285, 300, 600, 622, 635, 648, 660, and 679), or

(2) Has not passed a USCG Commercial Fishing Vessel Safety Examination, or for vessels less than 26 ft (8 m) in length, has not passed an alternate safety equipment examination, as described in paragraph (g) of this section.

(d) *Display or show proof*. A vessel that has passed a USCG Commercial Fishing Vessel Safety Examination must display or show proof of a valid USCG Commercial Fishing Vessel Safety Examination decal that certifies compliance with regulations found in 33 CFR Chapter 1 and 46 CFR Chapter 1, and which was issued within the last 2 years or at a time interval consistent with current USCG regulations or policy.

(1) In situations of mitigating circumstances, which may prevent a vessel from displaying a valid safety decal (broken window, etc.), NMFS, the observer, or NMFS' designated observer provider may accept the following associated documentation as proof of the missing safety decal described in paragraph (d) of this section:

(i) A certificate of compliance issued pursuant to 46 CFR 28.710;

(ii) A certificate of inspection pursuant to 46 U.S.C. 3311; or

(iii) For vessels not required to obtain the documents identified in (d)(1)(i) and (d)(1)(ii) of this section, a dockside examination report form indicating the decal number and date and place of issue.

(e) *Visual inspection*. Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner or operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation, in a manner and according to a timeframe as directed by NMFS. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item.

(f) *Vessel safety check*. Prior to the initial deployment, the vessel owner or operator or the owner or operator's designee must accompany the observer in a walk through the vessel's major spaces to ensure that no obviously hazardous conditions exist. This action may be a part of the vessel safety orientation to be provided by the vessel to the observer as required by 46 CFR 28.270. The vessel owner or operator or the owner or operator's designee must also accompany the observer in checking the following major items as required by applicable USCG regulations:

(1) Personal flotation devices/immersion suits;

(2) Ring buoys;

(3) Distress signals;

(4) Fire extinguishing equipment;

(5) Emergency position indicating radio beacon (EPIRB), when required, shall be registered to the vessel at its documented homeport;

(6) Survival craft, when required, with sufficient capacity to accommodate the total number of persons, including the observer(s), that will embark on the voyage; and

(7) Other fishery-area and vessel specific items required by the USCG.

(g) *Alternate safety equipment examination*. If a vessel is under 26 ft (8 m) in length, and in a remote location, and NMFS has determined that the USCG cannot provide a USCG Commercial Fishing Vessel Safety Examination due to unavailability of inspectors or to unavailability of transportation to or from an inspection station, the vessel will be adequate for observer deployment if it passes an alternate safety equipment examination conducted by a NMFS certified observer, observer provider, or a NMFS observer program employee, using a checklist of USCG safety requirements for commercial fishing vessels under 26 ft (8 m) in length. Passage of the alternative examination will only be effective for the single trip selected for observer coverage.

(h) *Duration*. The vessel owner or operator is required to comply with the requirements of this section when the vessel owner or operator is notified orally or in writing by an observer, a

NMFS employee, or a designated observer provider, that his or her vessel has been selected to carry an observer. The requirements of this section continue to apply through the time of the observer's boarding, at all times the observer is aboard, and at the time the observer disembarks from the vessel at the end of the observed trip.

(i) *Effect of inadequate status.* A vessel that would otherwise be required to carry an observer, but is inadequate for the purposes of carrying an observer, as described in paragraph (c) of this section, and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage.

[FR Doc. E7–21550 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 72, No. 211

Thursday, November 1, 2007

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 47

[Docket Number AMS–FV–06–0217; FV07–376]

RIN 0581–AC72

Amendments to Rules of Practice Regulations Under the Perishable Agricultural Commodities Act (PACA) To Increase Reparation Complaint Filing and Handling Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) is proposing to amend the Rules of Practice under the Perishable Agricultural Commodities Act (PACA) (7 CFR part 47) to increase informal complaint filing fees and formal complaint handling fees. The proposal would increase from $60 to $100 the fee for filing an informal complaint; and would increase from $300 to $500 the fee for handling a formal complaint.

DATES: Written or electronic comments received December 31, 2007 will be considered prior to issuance of a final rule.

ADDRESSES: You may submit written or electronic comments to:

(1) PACA Complaint Fee Comments, AMS, F&V Programs, PACA Branch, 1400 Independence Avenue, SW., Room 2095–S, Washington, DC 20250–0242.

(2) *Fax:* 202–690–4413.

(3) E-mail comments to *Dexter.Thomas@usda.gov.*

(4) *Internet: http://www.regulations.gov.*

Instructions: All comments will become a matter of public record and should be identified as ''PACA Complaint Fee Comments.'' Comments will be available for public inspection from the Agricultural Marketing Service at the above address or over the Agency's Web site at: *http://www.ams.usda.gov/paca.* Web site questions can be addressed to the PACA Webmaster, *Dexter.Thomas@usda.gov.*

FOR FURTHER INFORMATION CONTACT: John Koller, Director, Dispute Resolution Section, 202–720–1442.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

The PACA program is financed by license and user fees and has an annual operating budget of approximately $10 million. Currently, annual expenses exceed revenue by $3 million, a disparity that is projected to increase each year by another 3 to 5 percent. Greater than half of the program's expenditures are payroll and related expenses, followed at a distant second by the cost of maintaining office space through rent, communications, and utility expenses. The PACA license and complaint filing fees have remained unchanged since 1995, in part due to a one-time Congressional appropriation of $30.45 million deposited into the PACA reserve fund on October 1, 2000.

One of the most important functions of the Act is to require that PACA licensees fulfill their contractual obligations, and the Act provides a forum, before the Secretary, where firms that buy and sell fruits and vegetables can settle commercial disputes outside of the civil court system and recover damages for losses they have suffered. These cases are called reparation cases. In 1995, Section 6 of the PACA (7 U.S.C. 499f) was amended to require a $60 filing fee for filing an informal reparation complaint and a $300 handling fee for filing a formal reparation complaint with USDA under the PACA. Section 6 of the PACA also authorized the Secretary of Agriculture to alter the filing and handling fees by rulemaking. During its January 2007 meeting, the Fruit and Vegetable Industry Advisory Committee (Committee) recommended to the Secretary that the fee for filing an informal reparation complaint be increased to $100, and the handling fee for filing a formal reparation complaint be increased to $500. The Secretary accepted the Committee's recommendation. This proposed rule would implement the Committee's recommendation by increasing from $60 to $100 the fee for filing an informal reparation complaint; and increasing from $300 to $500 the fee for handling a formal reparation complaint.

PACA Rules of Practice applicable to reparation complaint proceedings inform the industry of USDA's procedures and requirements for the handling of informal and formal complaints under the Act (7 CFR, Part 47). Section 47.3(a) of the current Rules of Practice (7 CFR 47.3(a)) requires that a $60 filing fee accompany any written correspondence and related documents pertaining to the transaction(s) involved in the dispute before AMS can process and open an informal reparation complaint on behalf of the complainant.

When an informal reparation complaint is filed, AMS makes every effort to assist the parties in reaching a settlement of their dispute while gathering documents as part of its investigation. Mediation services are also offered to the parties throughout the informal handling of the complaint. If an informal settlement cannot be reached, however, the complainant is given the opportunity to file a formal reparation complaint. Section 47.6(c) of the current Rules of Practice (7 CFR 47.6(c)) requires that a complainant filing a formal reparation complaint pay a $300 handling fee to AMS to initiate formal complaint proceedings. Under formal complaint procedures, USDA's Judicial Officer issues a binding decision in the case.

In Fiscal Year 2007, there were 1,418 informal reparation complaints and 325 formal reparation complaints filed with AMS under the PACA. Over 91 percent of the informal complaints filed under the Act were resolved informally within 4 months. These complaints involved produce transactions valued at over

$17.5 million. USDA issued formal decision and orders in 322 cases involving award amounts totaling approximately $5.6 million. The largest award issued by USDA in Fiscal Year 2007 ordered payment of over $257,000 to a fruit and vegetable dealer.

In Fiscal Year 2006, AMS received 1,559 informal reparation complaints of which 92 percent were resolved informally within a 4-month timeframe. In Fiscal Year 2006, informal settlements exceeded $18.7 million. There were 300 formal reparation complaints filed under the Act that year.

AMS does not expect this proposal to raise a significant amount of revenue for the PACA program (estimated at $144,000 annually), but by increasing the fees for filing informal and formal reparation complaints, AMS believes that the burden for financing the PACA program is shifted more towards those who benefit directly from using PACA program services.

Executive Orders 12866 and 12988

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*), USDA has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR part 121) as those with less than 500 employees. The PACA requires all businesses that operate subject to its provisions to maintain a license issued by USDA. There are approximately 14,500 PACA licensees, a majority of which may be classified as small entities.

Over the past 4 years, the number of informal and formal reparation complaints filed with AMS under the PACA has gradually decreased. AMS believes that this decrease is due in part to enhanced PACA customer service focused on educating members of the produce industry of their rights and responsibilities under the PACA, as well as increased efforts to settle informal reparation complaints through mediation.

It is doubtful that any barrier to the use of USDA's PACA reparation procedure would be created by raising the filing and handling fees for informal and formal reparation complaints. Most complaints involve produce transactions valued in the thousands of dollars, making the proposed increase from $60 to $100 for filing an informal reparation complaint insignificant by comparison. In addition, the handling fee for filing a formal reparation complaint is recoverable as part of the amount awarded by USDA if the complainant prevails in the case. AMS believes that those who wish to initiate formal proceedings in a reparation case would consider the proposed increase in the formal reparation complaint handling fee from $300 to $500 to be insignificant as well.

Given the preceding discussion, AMS has determined that the provisions of the proposed rule would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR Part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements that are covered by this proposed rule were approved under OMB number 0581–0031 on October 5, 2004, and expire on October 31, 2007.

E-Government Act Compliance

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Brokers.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 47 as follows:

PART 47—[AMENDED]

1. The authority citation for part 47 is revised to read as follows:

Authority: 7 U.S.C. 499f; 5 U.S.C 553; 7 CFR 2.22(a)(1)(viii)(L), 2.79(a)(8)(xiii).

2. In § 47.3, paragraph (a)(4) is revised as follows:

§ 47.3 Institution of proceedings.

(a) * * *

(1) * * *

(2) * * *

(3) * * *

(4) The informal complaint shall be accompanied by a filing fee of $100 as authorized by the Act.

* * * * *

3. In § 47.6, paragraph (c) is revised as follows:

§ 47.6 Formal complaints.

* * * * *

(c) Service upon respondent; proof of service. Upon receipt by the Fruit and Vegetable Programs of the formal complaint, the accompanying papers and the $500 handling fee authorized by the Act, a copy thereof shall be served by the Fruit and Vegetable Programs upon the respondent in accordance with Sec. 47.4 of this Part. If the complaint is not in the proper form, the Fruit and Vegetable Programs shall return it and inform the complainant of the deficiencies therein.

* * * * *

Dated: October 26, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–21477 Filed 10–31–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Parts 103, 204, 214 and 299

[DHS Docket No. USCIS–2005–0030; CIS No. 2302–05]

RIN 1615–AA16

Special Immigrant and Nonimmigrant Religious Workers; Reopening the Public Comment Period

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule; extending and reopening the public comment period.

SUMMARY: U.S. Citizenship and Immigration Services announces the extension and reopening of the public comment period for the proposed rule entitled ''Special Immigrant and Nonimmigrant Religious Workers.'' The

proposed rule was initially published in the **Federal Register** on April 25, 2007. Written comments on the proposed rule were to be submitted on or before June 25, 2007 (a 60-day comment period) in order to be assured of consideration. U.S. Citizenship and Immigration Services has decided to accept late-filed comments and reopen the public comment period for an additional 15 days.

DATES: Written comments on the proposed rule must be submitted on or before November 16, 2007. Comments received by USCIS after this date will not be considered.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2005–0030, by one of the following methods:

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

• *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2005–0030 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.

• *Hand Delivery/Courier:* Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Rodger Pitcairn, Adjudications Officer, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone: 202–272–8410, fax: 202–272–1398, e-mail: *rodger.pitcairn@dhs.gov*.

SUPPLEMENTARY INFORMATION: On April 25, 2007, U.S. Citizenship and Immigration Services (USCIS) published a proposed rule entitled, ''Special Immigrant and Nonimmigrant Religious Workers,'' at 72 FR 20442. This rule proposed significant amendments to USCIS regulations governing the special immigrant religious worker category. You may view a copy of the April 25, 2007, proposed rule at *http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/E7-7743.htm*.

USCIS received numerous comments by the close of the 60-day public comment period, June 25, 2007. However, several potential commenters have requested additional time to prepare and submit comments. Accordingly, USCIS has decided to reopen the comment period for an additional 15 days, beginning on November 1, 2007 and ending on November 16, 2007. In addition to this comment period reopening, USCIS will extend the original comment period for the interim period between the close of the original comment period on June 25, 2007, and November 16, 2007 and consider those comments received during that period as timely submitted. Comments received by USCIS after November 16, 2007 will not be considered in drafting the final rule.

Dated: October 25, 2007.

Emilio T. Gonzalez,

Director, U.S. Citizenship and Immigration Services.

[FR Doc. E7–21469 Filed 10–31–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0129; Directorate Identifier 2007–NM–099–AD]

RIN 2120–AA64

Airworthiness Directives; EMBRAER Model EMB–135BJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

It has been found that some adhesive tapes used in the interior furnishings do not comply with the applicable flammability requirements. In case of some nearby ignition source, fire may propagate to the aircraft.

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

DATES: We must receive comments on this proposed AD by December 3, 2007.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Fax:* (202) 493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–0129; Directorate Identifier 2007–NM–099–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2007–03–04, effective April 10, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

It has been found that some adhesive tapes used in the interior furnishings do not comply with the applicable flammability requirements. In case of some nearby ignition source, fire may propagate to the aircraft.

The corrective actions include an inspection to determine the presence of cotton adhesive tape, and replacement of the tape with new tape if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EMBRAER has issued Service Bulletin 145LEG–25–0080, dated October 10, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 41 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 proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,560, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2007–0129; Directorate Identifier 2007–NM–099–AD.

Comments Due Date

(a) We must receive comments by December 3, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ airplanes, certificated in any category, as identified in EMBRAER Service Bulletin 145LEG–25–0080, dated October 10, 2006.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

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

It has been found that some adhesive tapes used in the interior furnishings do not comply with the applicable flammability requirements. In case of some nearby ignition source, fire may propagate to the aircraft.

The corrective actions include an inspection to determine the presence of cotton adhesive tape, and replacement of the tape with new tape if necessary.

Actions and Compliance

(f) Within 48 months or 5,000 flight hours after the effective date of this AD, whichever occurs first, unless already done: Carry out a general visual inspection (GVI) for presence of cotton adhesive tape, part number (P/N) FMM 1121–5, in the interior of center-passenger cabin furnishings, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–25–0080, dated October 10, 2006. If any cotton tape, P/N FMM 1121–5, is found, before further flight, replace it with new PVF adhesive tape bearing P/N KB42/75, as specified in paragraphs (f)(1) and (f)(2) of this AD.

(1) Replace cotton adhesive tapes, P/N FMM 1121–5, located under the center-passenger cabin carpet, with new PVF adhesive tapes bearing P/N KB42/75, in accordance with the Accomplishment Instructions of the service bulletin.

(2) Replace cotton adhesive tapes, P/N FMM 1121–5, applied to electrical cables in the bottom of the forward galley assembly, to electrical cables and inside the left-hand (LH) and right-hand (RH) forward and LH aft side ledges, and to electrical cables, flexible hose of the video monitor, soundproofing blanket,

and in the LH and RH forward and RH aft pocket door covers and partitions, with new PVF adhesive tapes bearing P/N KB42/75 with heat-shrinkable sleeve, P/N RNF–100–1–0, in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: For the purpose of this AD, a general visual inspection (GVI) is: ''A visual examination of the interior or exterior area of an installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance, unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight or drop-light, and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked.''

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, 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. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Brazilian Airworthiness Directive 2007–03–04, effective April 10, 2007, and EMBRAER Service Bulletin 145LEG–25–0080, dated October 10, 2006, for related information.

Issued in Renton, Washington, on October 12, 2007.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–21490 Filed 10–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25173; Directorate Identifier 2006–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems Propeller Models B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede three existing airworthiness directives (ADs) for McCauley Propeller Systems propeller models B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0. Those ADs currently require fluorescent penetrant inspections (FPI) and eddy current inspections (ECI) of propeller blades for cracks, and if any crack indications are found, removing the blade from service. This proposed AD would require the same initial inspections, but extends the compliance times and intervals, adds repetitive inspections, and mandates a life limit for the blades. This proposed AD results from our determination that we must require repetitive inspections for cracks, and from reports of blunt leading edges of the propeller blades due to erosion. We are proposing this AD to detect cracks in the propeller blade that could cause failure and separation of the propeller blade and loss of control of the airplane, and to detect blunt leading edges on the propeller blades, which could cause airplane single engine climb performance degradation and could result in an increased risk of collision with terrain.

DATES: We must receive any comments on this proposed AD by December 31, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact McCauley Propeller Systems, P.O. Box 7704, Wichita, KS 67277–7704, telephone (800) 621–7767 for the service information referenced in this AD.

FOR FURTHER INFORMATION CONTACT: Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209; e-mail: *jeff.janusz@faa.gov;* telephone: (316) 946–4148; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

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 DOT Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Discussion

On July 14, 2003, we issued AD 2003–15–01, Amendment 39–13243 (68 FR 42244, July 17, 2003). That AD applies to the following McCauley Systems, Inc. propeller assemblies that are installed on, but not limited to, BAE Systems (Operations) Limited Jetstream Model 4101 airplanes:

- Hub Model B5JFR36C1101, with Model 114GC series propeller blades.
- Hub Model C5JFR36C1102, with Model L114GC series propeller blades.
- Hub Model B5JFR36C1103, with Model 114HC series propeller blades.
- Hub Model C5JFR36C1104, with Model L114HC series propeller blades.

That AD requires a onetime FPI of propeller blade retention areas for cracks. That AD resulted from a report of a significant crack in a propeller blade shank and two reports of cracks in the hubs of the same propeller model. That condition, if not corrected, could result in a failure of the propeller blade or hub and loss of control of the airplane.

On August 18, 2003, we issued AD 2003–17–10, Amendment 39–13285 (68 FR 52337, September 3, 2003). That AD superseded AD 2003–15–01 to require initial and repetitive FPI or eddy current inspections (ECI) of the propeller blades, and for hubs that have been overhauled one or more times. That AD resulted from reports of four additional propeller blade cracks. Based on examination of these cracked propeller blades, we established a repetitive inspection interval.

On November 10, 2004, we issued AD 2004–23–16, Amendment 39–13871 (67 FR 67807, November 22, 2004). That AD requires a onetime eddy-current inspection of the propeller hub for cracks, and if necessary, replacing the propeller assembly. That AD resulted from three reports of cracked hubs. The compliance times for the onetime hub inspections in 2004–23–16 are more restrictive than the compliance times required in AD 2003–17–10.

On July 18, 2006, we issued AD 2006–15–13, Amendment 39–14693 (71 FR 42258, July 26, 2006). That AD requires a onetime fluorescent penetrant inspection (FPI) and eddy current inspection (ECI) of propeller blades for cracks, and if cracked, removing the blade from service. That AD resulted from a report of two propeller blades on the same propeller assembly, found cracked during propeller overhaul. That condition, if not corrected, could result in failure and separation of the propeller blade and loss of control of the airplane.

Actions Since We Issued AD 2006–15–13

Since we issued AD 2006–15–13, we have reduced the crack inspection interval. We also received reports of blunt leading edges of propeller blades due to erosion of some propeller blades on Jetstream 41 airplanes. Based on the reports we received from inspections performed after we issued AD 2006–15–13, McCauley Propeller Systems issued a new alert service bulletin to address the inspections for cracks.

Relevant Service Information

We have reviewed and approved the technical contents of McCauley Propeller Systems Alert Service Bulletin (ASB) ASB255, dated January 8, 2007, which describes procedures for inspecting the propeller blades for cracks.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For that reason, we are proposing this AD, which would require for certain blades, an FPI and ECI of propeller blades for cracks based on hours time-in-service after the effective date of the AD, and if any crack indications are found, removal from service. Also, the proposed AD would require inspecting for blunt leading edges of the propeller blades while inspecting them for cracks, and if necessary, dressing any erosion before returning the blades to service. The proposed AD would require that you do these actions using the service information described previously.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Costs of Compliance

We estimate that this proposed AD would affect 22 propeller assemblies installed on airplanes of U.S. registry. We estimate that it would take about 47 work-hours per propeller to perform the required actions, and that the average labor rate is $80 per work-hour. Required parts would cost about $260 per propeller. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $88,440.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13243 (68 FR

42244, July 17, 2003), Amendment 39–13285 (68 FR 52337, September 3, 2003), and Amendment 39–14693 (71 FR 42258, July 26, 2006), and by adding a new airworthiness directive to read as follows:

McCauley Propeller Systems: Docket No. FAA–2006–25173; Directorate Identifier 2006–NE–24–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by December 31, 2007.

Affected ADs

(b) This AD supersedes AD 2003–15–01, Amendment 39–13243; AD 2003–17–10, Amendment 39–13285; and 2006–15–13, Amendment 39–14693.

Applicability

(c) This AD applies to McCauley Propeller Systems propeller models B5JFR36C1101/114GCA–0, C5JFR36C1102/L114GCA–0, B5JFR36C1103/114HCA–0, and C5JFR36C1104/L114HCA–0. These propellers are installed on BAE Systems (Operations) Limited Jetstream Model 4100 and 4101 series airplanes (Jetstream 41).

Unsafe Condition

(d) This AD results from our determination that we must require repetitive inspections for cracks, and from reports of blunt leading edges of the propeller blades due to erosion. We are issuing this AD to detect cracks in the propeller blade that could cause failure and separation of the propeller blade and loss of control of the airplane, and to detect blunt leading edges on the propeller blades, which could cause airplane single engine climb performance degradation and could result in an increased risk of collision with terrain.

Compliance

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

Life Limit

(f) Remove all 114GCA–0, L114GCA–0, 114HCA–0, and L114HCA–0 propeller blades upon reaching 10,000 operating hours time-since-new.

Initial Propeller Blade Inspection

(g) Perform an initial fluorescent penetrant inspection and eddy current inspection of propeller blades. Use the Equipment Required and Accomplishment Instructions of McCauley Propellers Alert Service Bulletin ASB255, dated January 8, 2007, and the following compliance schedule:

TABLE 1.—COMPLIANCE SCHEDULE

If the Propeller Blade	Then Inspect the Propeller Blade
(1) Has more than 2,400 operating hours time-since-new (TSN), time-since-last inspection (TSLI), or time-since-overhaul (TSO).	Within 100 operating hours time-in-service (TIS) after the effective date of this AD.
(2) Has 2,400 or fewer operating hours TSN, TSLI, or TSO	Upon reaching 2,500 operating hours TSN, TSLI, or TSO.

Propeller Blades Found Cracked

(h) Remove from service propeller blades found with any crack indications.

Repetitive Propeller Blade Inspection

(i) Thereafter, inspect the propeller blades within 2,500 operating hours TSLI or TSO. Use the Equipment Required and Accomplishment Instructions of McCauley Propellers Alert Service Bulletin ASB255, dated January 8, 2007.

Inspection for Blunt Erosion on the Leading Edge of the Propeller Blade

(j) Every time the propeller is removed for the inspection for cracks, inspect the blade for erosion and, if necessary, repair the erosion. The McCauley Propeller Systems Blade Overhaul Manual No., BOM, 100, contains information on inspecting and repairing erosion on the propeller blade.

Reporting Requirements

(k) Within 10 calendar days of the inspection, use the Reporting Form for Service Bulletin 255 to report all inspection findings to McCauley Propeller Systems, P.O. Box 7704, Wichita, KS 67277–7704, telephone (800) 621–7767.

(l) The Office of Management and Budget (OMB) has approved the reporting requirements and assigned OMB control number 2120–0056.

Alternative Methods of Compliance

(m) The Manager, Wichita Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(n) Under 39.23, we are limiting the availability of special flight permits for this AD. Special flight permits are available only if:

(1) The operator has not seen signs of external oil leakage from the hub; and

(2) The operator has not observed abnormal propeller vibration or abnormal engine vibration; and

(3) The operator has not observed any other abnormal operation from the propeller; and

(4) The operator has not made earlier reports of abnormal propeller vibration, abnormal engine vibration, or other abnormal propeller operations that have not been addressed.

Related Information

(o) Contact Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate, 1801 Airport Road, Room 100, Wichita, KS 67209; e-mail: *jeff.janusz@faa.gov*; telephone: (316) 946–4148; fax: (316) 946–4107, for more information about this AD.

Issued in Burlington, Massachusetts, on October 24, 2007.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–21493 Filed 10–31–07; 8:45 am]

BILLING CODE 4910–13–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

RIN 3014–AA22

Emergency Transportable Housing Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to make recommendations for possible revisions to the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to include provisions for emergency transportable housing. This notice announces the dates, time, and location of the next committee meeting.

DATES: The meeting is scheduled for November 19 and 20, 2007 from 10 a.m.

to 5 p.m. on November 19 and from 9 a.m. to 5 p.m. on November 20.

ADDRESSES: The meeting will be held at the Access Board's offices, 1331 F Street, NW., suite 1000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0020 (Voice); (202) 272–0082 (TTY). These are not toll-free numbers. E-mail address: *mazz@access-board.gov.*

SUPPLEMENTARY INFORMATION: On August 23, 2007, the Architectural and Transportation Barriers Compliance Board (Access Board) established an advisory committee to make recommendations for possible revisions to the Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Accessibility Guidelines to include provisions for emergency transportable housing (72 FR 48251). The next meeting of the committee will take place on November 19 and 20, 2007. The preliminary meeting agenda, along with information about the committee, is available at the Access Board's Web site (*http://www.access-board.gov/eth/index.htm*).

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the committee on issues of interest to them during public comment periods scheduled on each day of the meeting. Additionally, all interested persons will have the opportunity to comment when proposed rules regarding emergency transportable housing accessibility are issued in the **Federal Register** by the Access Board.

The meeting site is accessible to individuals with disabilities. Individuals who require sign language interpreters, real-time captioning, or materials in alternate formats should contact Marsha Mazz by November 2. Also, persons wishing to provide handouts or other written information to the committee are requested to provide electronic format in advance of the meeting to Marsha Mazz preferably via e-mail so that alternate formats such as large print can be distributed to committee members. Persons attending the meeting are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E7–21557 Filed 10–31–07; 8:45 am]

BILLING CODE 8150–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1193 and 1194

RIN 3014–AA22

Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established a Telecommunications and Electronic and Information Technology Advisory Committee (Committee) to assist it in revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. This notice announces the dates, times, and location of six upcoming meetings of the committee, five of which will be held as conference calls, one of which will be an in-person meeting.

DATES: The conference calls are scheduled for November 20, November 27, December 4, December 11, and December 18, 2007 (beginning at 1 p.m. and ending at 3 p.m. Eastern time each day). The in-person meeting will take place on November 13–16, 2007 (beginning at 12 p.m. and ending at 6 p.m. on November 13; beginning at 9 a.m. and ending at 5 p.m. on November 14 and 15; and, beginning at 9 a.m. and ending at 2 p.m. on November 16).

ADDRESSES: Individuals can participate in the conference calls on November 20, November 27, December 4, December 11 and December 18, 2007 by dialing into the teleconference numbers which will be posted on the Access Board's web site at: *http://www.access-board.gov/sec508/update-index.htm.* The in-person meeting on November 13–16, 2007 will be held at the National Science Foundation. All attendees should go to 4201 Wilson Boulevard, Arlington, VA 22230, to pick up security passes and then go to 4121 Wilson Boulevard, Stafford Place II, Room 555, Arlington, VA 22230 for the meeting.

FOR FURTHER INFORMATION CONTACT: Timothy Creagan, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number: 202–272–0016 (Voice); 202–272–0082 (TTY). Electronic mail address: *creagan@access-board.gov.*

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) established the Telecommunications and Electronic and Information Technology Advisory Committee (Committee) to assist it in revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. The next in-person committee meeting will take place November 13–16, 2007 (beginning at 12 p.m. and ending at 6 p.m. on November 13; beginning at 9 a.m. and ending at 5 p.m. on November 14 and 15; and, beginning at 9 a.m. and ending at 2 p.m. on November 16). The teleconference meetings on November 20, November 27, December 4, December 11, and December 18, 2007 will be from 1 p.m. to 3 p.m. Eastern time).

The meetings will focus on outstanding issues, particularly those identified in ''minority reports'' submitted to the committee by some members. The agendas, instructions (including information on captioning), and dial in telephone numbers for the in-person meeting, as well as for the teleconferences are available at *http://www.access-board.gov/sec508/update-index.htm.* Notices of future meetings will be published in the **Federal Register**.

The committee may cancel any one of the teleconferences before they are scheduled to take place, depending on the needs of the committee and their progress in discussing and resolving outstanding issues. Any notices of cancellation of any of these teleconferences will be posted at: *http://www.access-board.gov/sec508/update-index.htm.*

The conference calls are open to the public and interested persons can dial into the teleconferences and communicate their views. Members of the public will have opportunities to address the committee on issues of interest to them and the committee during public comment periods scheduled during each conference call. Participants may call into the teleconferences from any location of their choosing.

The in-person meeting on November 13–16, 2007 is open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the committee on issues of interest to them and the committee during public comment periods scheduled on each day of the meeting.

The meeting site for the in-person meeting is accessible to individuals with disabilities. Sign language interpreters, an assistive listening system, and real-time captioning will be provided. For the comfort of other participants, persons attending committee meetings are requested to refrain from using perfume, cologne, and other fragrances. Due to security measures at the National Science Foundation, all attendees must notify the Access Board's receptionist at (202) 272–0007 or *receptionist@access-board.gov* by November 5, 2007 of their intent to attend the in-person meeting. This notification is required for expeditious entry into the facility and will enable the Access Board to provide additional information as needed.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E7–21554 Filed 10–31–07; 8:45 am]

BILLING CODE 8150–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

RIN 3014–AA22

Passenger Vessel Emergency Alarms Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to make recommendations on issues related to the effectiveness of emergency alarm systems for individuals with hearing loss or deafness on passenger vessels. This notice announces the dates, time, and location of the next committee meeting.

DATES: The meeting is scheduled for November 28 and 29, 2007 from 9 a.m. to 5 p.m. on both days.

ADDRESSES: The meeting will be held at the Access Board's offices, 1331 F Street, NW., suite 1000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0012 (Voice); (202) 272–0082 (TTY). These are not toll-free numbers. E-mail address: *pvag@access-board.gov.*

SUPPLEMENTARY INFORMATION: On August 13, 2007, the Architectural and Transportation Barriers Compliance Board (Access Board) established an advisory committee to make recommendations on issues related to the effectiveness of emergency alarm systems for individuals with hearing loss or deafness on passenger vessels. (72 FR 45200; August 13, 2007). The next meeting of the committee will take place on November 28 and 29, 2007. The preliminary meeting agenda, along with information about the committee, is available at the Access Board's Web site (*http://www.access-board.gov/pvaac/alarms/*).

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the committee on issues of interest to them during public comment periods scheduled on each day of the meeting. Additionally, all interested persons will have the opportunity to comment when proposed rules regarding passenger vessel accessibility are issued in the **Federal Register** by the Access Board.

The meeting site is accessible to individuals with disabilities. Sign language interpreters, an assistive listening system, and computer assisted real-time transcription (CART) will be provided. Persons attending the meeting are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E7–21555 Filed 10–31–07; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7826]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding these proposed regulatory flood elevations. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 30, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–D–7826, to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001, *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Clarke County, Alabama, and Incorporated Areas				
Alabama River	459 feet upstream of the intersection of Reedy Creek and Cross Section A.	None	+35	Unincorporated Areas of Clarke County.
	2439 ft downstream of Intersection of Alabama River and Silver Creek Lake Road.	None	+61	
East Basset Creek	The point where East Basset Creek and County Highway 15 intersects.	None	+34	Unincorporated Areas of Clarke County.
	10906 ft upstream of the intersection of East Bassett Creek & County Highway 15.	None	+45	
Tombigbee River	1332 feet downstream of the intersection of Tombigbee River and Southern Railway.	None	+35	Unincorporated Areas of Clarke County.
	3783 feet downstream of the intersection of Tombigbee River and U.S. Highway 43.	None	+36	

* National Geodetic Vertical Datum.
\# Depth in feet above ground.
\+ North American Vertical Datum.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Clarke County

Maps are available for inspection at 114 Court Street, Grove Hill, AL 36451.

Elmore County, Alabama, and Incorporated Areas				
Alabama River	At U.S. Highway 82	None	+161	City of Prattville.
	Where Interstate 65 crosses Still Creek	None	+163	
Coosa River	810 feet upstream of confluence with Taylor Creek	None	+180	City of Wetumpka.
	800 feet upstream of confluence with Taylor Creek	None	+180	
Coosada Creek	4270 feet downstream of Springdale Road	None	+202	City of Millbrook.
	On Springdale Road	None	+216	
Coosada Creek	685 feet upstream of Airport Road	None	+201	Town of Coosada.
	695 feet upstream of Airport Road	None	+201	
Cottonford Creek	4590 feet downstream of Deatsville Highway	None	+261	City of Millbrook.
	2760 feet downstream of Deatsville Highway	None	+269	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Cottonford Creek	290 feet upstream of confluence with Mortar Creek	None	+169	Town of Coosada.
	300 feet upstream of confluence with Mortar Creek	None	+169	
Crescant Lake	2600 feet upstream of Interstate 65 on Still Creek	None	+164	City of Millbrook.
	2610 feet upstream of Interstate 65 on Still Creek	None	+164	
Grandview Branch	2780 feet downstream of State Highway 14	None	+271	City of Millbrook.
	260 feet downstream of State Highway 14	None	+304	
Gravel Pit Creek	Under U.S. 231	None	+170	Unincorporated Areas of Elmore County City of Millbrook.
	5890 feet upstream of U.S. 231	None	+319	
Jackson Branch	390 feet west of Sandtown Road and Phillips Drive	None	+165	
	410 feet downstream of Louisville and Nashville RR on Alabama River.	None	+165	
Jackson Branch	1270 feet downstream of confluence with Zion Branch	None	+165	Town of Coosada.
	1280 feet downstream of confluence with Zion Branch	None	+165	
Lewis Creek	740 feet downstream of Friendship Road	None	+234	City of Tallassee.
	1370 feet upstream of Friendship Road	None	+316	
Mill Creek	110 feet downstream of Old Mill Run	None	+213	City of Millbrook.
	120 feet downstream of Old Mill Run	None	+213	
Tributary	350 feet upstream of confluence with Mill Creek	None	+206	City of Millbrook.
	1480 feet upstream of confluence with Mill Creek	None	+208	
Mortar Creek	710 feet downstream of confluence with Cottonford Creek.	None	+168	Town of Coosada.
	At confluence with Cottonford Creek	None	+169	
Still Creek	210 feet downstream of Edgewood Road	None	+174	City of Millbrook.
	470 feet upstream of Edgewood Road	None	+185	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Millbrook
Maps are available for inspection at 3390 Main Street, Millbrook, AL 36054.

City of Prattville
Maps are available for inspection at 101 West Main Street, Prattville, AL 36067.

City of Tallassee
Maps are available for inspection at 3 Freeman Avenue, Tallassee, AL 36078.

City of Wetumpka
Maps are available for inspection at 212 S. Main Street, Wetumpka, AL 36067.

Town of Coosada
Maps are available for inspection at 5800 Coosada Road, Coosada, AL 36020.

Unincorporated Areas of Elmore County
Maps are available for inspection at 100 Commerce Street, Room 207, Wetumpka, AL 36092.

Navajo County, Arizona, and Incorporated Areas

Flooding source(s)	Location of referenced elevation	Effective	Modified	Communities affected
Cottonwood Wash	Approximately 150 feet upstream of confluence with Silver Creek.	None	+5568	Town of Snowflake, Town of Taylor.
	Approximately 3.18 miles upstream of Paper Mill Road.	None	+5747	
Split Flow	Approximately 300 feet upstream of confluence with Cottonwood Wash.	None	+5647	Town of Snowflake, Town of Taylor.
	Approximately 0.65 mile upstream of confluence with Cottonwood Wash.	None	+5666	
Hog Wash	Approximately 1,300 feet downstream of Hilltop Road	None	+6057	Unincorporated Areas of Navajo County.
	Approximately 1,440 feet upstream of Deuces Wild Road.	None	+6280	
Tributary	Approximately 200 feet upstream of confluence with Hog Wash.	None	+6143	City of Show Low, Unincorporated Areas of Navajo County.
	Approximately 0.50 mile upstream of Smith Ranch Road.	None	+6224	
Linden Draw	Approximately 2.20 miles downstream of School House Lane.	None	+6089	Unincorporated Areas of Navajo County.
	Approximately 0.71 mile upstream of Mission Lane	None	+6306	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary	Approximately 100 feet upstream of confluence with Linden Draw.	None	+6189	Unincorporated Areas of Navajo County.
	Approximately 1,200 feet upstream of Burton Drive	None	+6276	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
\+ North American Vertical Datum.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Show Low
Maps are available for inspection at 550 N. 9th Place, Show Low, AZ 85901.

Town of Snowflake
Maps are available for inspection at 81 West First Street, Snowflake, AZ 85937.

Town of Taylor
Maps are available for inspection at 425 Papermill Road, Taylor, AZ 85939.

Unincorporated Areas of Navajo County
Maps are available for inspection at 465 First Avenue, Holbrook, AZ 86025.

Labette County, Kansas, and Incorporated Areas

Flooding source(s)	Location of referenced elevation	Effective	Modified	Communities affected
Bachelor Creek	Approximately 0.81 mile upstream of confluence with Labette Creek.	None	+855	Unincorporated Areas of Labette County.
	Approximately 1.4 miles upstream of Ness Road	None	+888	
Labette Creek	Approximately 0.74 mile downstream of Southern Avenue.	None	+864	City of Parsons, Unincorporated Areas of Labette County.
	Approximately 2.2 miles upstream of MKT Railroad	None	+892	
Labette Creek	Approximately 0.38 mile downstream of confluence with Bachelor Creek.	None	+855	Unincorporated Areas of Labette County.
	Approximately 3.03 miles upstream of confluence with Bachelor Creek.	None	+858	
Tributary A	Approximately 0.95 mile downstream of Rooks Road	None	+856	Unincorporated Areas of Labette County.
	Approximately 0.44 mile upstream of Rooks Road	None	+866	
Tributary B	Approximately 0.75 mile upstream of confluence with Labette Creek.	None	+859	Unincorporated Areas of Labette County.
	Approximately 1.07 miles upstream of Queens Road	None	+888	
Little Labette Creek	Approximately 0.27 mile downstream of MKT Railroad	None	+865	City of Parsons, Unincorporated Areas of Labette County.
	Approximately 0.45 mile upstream of U.S. Highway 160.	None	+907	
Tributary A	Approximately 0.19 mile upstream of confluence with Little Labette Creek.	None	+885	Unincorporated Areas of Labette County.
	Approximately 1.30 miles upstream of Meade Road	None	+903	
Tributary B	Approximately 500 feet upstream of confluence with Little Labette Creek.	None	+897	Unincorporated Areas of Labette County.
	Approximately 0.23 mile upstream of U.S. Highway 160.	None	+903	
Tolen Creek	Approximately 0.38 mile upstream of confluence with Labette Creek.	None	+880	City of Parsons, Unincorporated Areas of Labette County.
	Approximately 0.32 mile upstream of Pratt Road	None	+891	
Tributary A	Approximately 0.11 mile upstream of confluence of Tolen Creek.	None	+883	City of Parsons, Unincorporated Areas of Labette County.
	Appromimately 1.46 miles upstream of U.S. Highway 160.	None	+901	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
\+ North American Vertical Datum.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Parsons
Maps are available for inspection at 112 South 17th Street, Parsons, KS 67357.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Unincorporated Areas of Labette County

Maps are available for inspection at 501 Merchant Street, Oswego, KS 67356.

Lyon County, Minnesota, and Incorporated Areas

Flooding source(s)	Location of referenced elevation	Effective	Modified	Communities affected
County Ditch No. 63	Approximately 5,190 feet downstream of County Road 8.	None	+1150	Unincorporated Areas of Lyon County, City of Ghent.
	Approximately 60 feet upstream of 310th Street	None	+1167	
Meadow Creek	At County Boundary	None	+1122	Unincorporated Areas of Lyon County.
	Approximately 2,735 feet upstream from County Road 7.	None	+1185	
Meadow Creek Overflow Channel.	At confluence with Meadow Creek	None	+1185	Unincorporated Areas of Lyon County.
	Approximately 340 feet upstream of State Highway 23	None	+1189	
Redwood River	At County Boundary	None	+1067	Unincorporated Areas of Lyon County, City of Lynd, City of Marshall, City of Russell.
	Approximately 225 feet upstream of State Highway 23	None	+1516	
South Branch Yellow Medicine River.	At confluence with Yellow Medicine River	None	+1119	Unincorporated Areas of Lyon County, City of Minneota.
	Approximately 1,495 feet upstream of West Lyon Street.	None	+1170	
Three Mile Creek	At confluence with Redwood River	None	+1081	Unincorporated Areas of Lyon County.
	Approximately 4,880 feet upstream from State Highway 68.	None	+1158	
Yellow Medicine River	Approximately 3,295 feet downstream of County Boundary.	None	+1094	Unincorporated Areas of Lyon County.
	At Lyon Lincoln Road	None	+1167	

* National Geodetic Vertical Datum.
\# Depth in feet above ground.
\+ North American Vertical Datum.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Ghent

Maps are available for inspection at 107 Chapman Street, Ghent, MN 56239.

City of Lynd

Maps are available for inspection at 111 West Railroad, Lynd, MN 56157.

City of Marshall

Maps are available for inspection at 344 West Main Street, Marshall, MN 56258.

City of Minneota

Maps are available for inspection at 129 East 1st Street, Minneota, MN 56264.

City of Russell

Maps are available for inspection at 106 River Street, Russell, MN 56169.

Unincorporated Areas of Lyon County

Maps are available for inspection at 607 West Main Street, Marshall, MN 56258.

Anson County, North Carolina, and Incorporated Areas

Flooding source(s)	Location of referenced elevation	Effective	Modified	Communities affected
Canal Branch	At the confluence with Palmetto Branch	None	+217	Town of Ansonville.
	Approximately 80 feet upstream of Threadgill Street	None	+310	

* National Geodetic Vertical Datum.
\# Depth in feet above ground.
\+ North American Vertical Datum.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Ansonville

Maps are available for inspection at Ansonville Town Hall, 8778 U.S. Highway 52, Ansonville, NC.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Buncombe County, North Carolina and Incorporated Areas				
Avery Creek	Approximately 0.5 mile upstream of the confluence with the French Broad River.	+2,050	+2,051	Unincorporated Areas of Buncombe County.
	Approximately 0.5 mile upstream of Misty Valley Parkway.	None	+2,100	
Beaverdam Creek (into French Broad River) Tributary 1.	Approximately 900 feet upstream of Hillcrest Road	None	+2,108	Unincorporated Areas of Buncombe County, Town of Woodfin.
	Approximately 340 feet upstream of Baird Cove Road (State Road 2088).	None	+2,348	
Beaverdam Creek (into South Hominy Creek).	At the confluence with South Hominy Creek	None	+2,107	Unincorporated Areas of Buncombe County.
	Approximately 50 feet downstream of Wise Road (State Road 3467).	None	+2,270	
Beaverdam Creek (into South Hominy Creek) Tributary.	At the confluence with Beaverdam Creek (into South Hominy Creek).	None	+2,214	Unincorporated Areas of Buncombe County.
	Approximately 0.6 mile upstream of the confluence with Beaverdam Creek (into South Hominy Creek).	None	+2,250	
Bee Branch	At the confluence with Willow Creek	None	+2,281	Unincorporated Areas of Buncombe County.
	Approximately 50 feet upstream of Bee Branch Road	None	+2,418	
Beetree Creek	At the confluence with Swannanoa River	+2,146	+2,148	Unincorporated Areas of Buncombe County.
	Approximately 0.9 mile upstream of Bee Tree Road (State Road 2428).	None	+2,682	
Bent Creek	Approximately 0.4 mile upstream of the confluence with French Broad River.	+2,018	+2,019	Unincorporated Areas of Buncombe County.
	Approximately 0.6 mile upstream of Blue Ridge Parkway.	None	+2,031	
Bill Moore Creek	Approximately 900 feet upstream of the confluence with Hominy Creek.	+2,068	+2,069	Unincorporated Areas of Buncombe County, City of Asheville.
	Approximately 110 feet upstream of Reeves Cove Road (State Road 3439).	None	+2,160	
Broad River	The Buncombe/Henderson County boundary	None	+1,719	Unincorporated Areas of Buncombe County.
	Approximately 0.3 mile upstream of NC Highway 9	None	+2,592	
Brush Creek	At the confluence with Cane Creek	None	+2,164	Unincorporated Areas of Buncombe County.
	Approximately 220 feet upstream of Dotson Cove Road.	None	+2,511	
Bull Creek	At the confluence with Swannanoa River	+2,108	+2,109	Unincorporated Areas of Buncombe County.
	Approximately 1,260 feet upstream of the confluence with the Swannanoa River.	+2,110	+2,109	
Camp Branch	At the confluence with Swannanoa River	+2,314	+2,315	Town of Black Mountain.
	Approximately 660 feet upstream of Camp Branch Road.	None	+2,526	
Cane Creek	Approximately 0.5 mile upstream of the confluence with the French Broad River.	None	+2,061	Unincorporated Areas of Buncombe County, City of Asheville.
	Approximately 1,510 feet upstream of the confluence with Garren Creek.	None	+2,309	
Cane Creek (into Hominy Creek).	Approximately 0.3 mile upstream of the confluence with Hominy Creek.	+2,008	+2,009	City of Asheville.
	Approximately 1,490 feet upstream of Sand Hill Road	None	+2,011	
Curtis Creek	At the confluence with South Hominy Creek	None	+2,244	Unincorporated Areas of Buncombe County.
	Approximately 20 feet upstream of Curtis Creek Road (State Road 1113).	None	+2,383	
Dick Branch	At the confluence with Flat Creek (into French Broad River).	None	+1,940	Unincorporated Areas of Buncombe County.
	Approximately 240 feet upstream of Flat Creek Church Road (State Road 1764).	None	+1,962	
Dillingham Creek	Just upstream of Dillingham Road (State Road 2173)	None	+2,273	Unincorporated Areas of Buncombe County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 40 feet upstream of Dillingham Road (State Road 2173).	None	+2,545	
Dingle Creek	Approximately 0.2 mile upstream of the confluence with French Broad River.	+2,007	+2,008	Unincorporated Areas of Buncombe County, City of Asheville.
	Approximately 1,660 feet upstream of Ballantree Drive.	None	+2,631	
Dix Creek	At the confluence with Newfound Creek	None	+1,929	Unincorporated Areas of Buncombe County.
	Approximately 900 feet upstream of Old Leicester Highway (State Road 1002).	None	+2,026	
Eller Cove	At the confluence with Reems Creek	None	+2,078	Town of Weaverville.
	Approximately 40 feet upstream of Eller Hollow Road (State Road 2104).	None	+2,172	
Emma Branch	Approximately 300 feet upstream of the confluence with Smith Mill Creek.	None	+1,977	Unincorporated Areas of Buncombe County, City of Asheville.
	Approximately 0.7 mile upstream of Eliada Home Road.	None	+2,299	
Tributary 2	At the confluence with Emma Branch	None	+2,069	City of Asheville.
	Approximately 0.5 mile upstream of Brickyard Road	None	+2,309	
Flat Creek	At the confluence with Broad River	None	+1,946	Unincorporated Areas of Buncombe County.
	Approximately 1.1 miles upstream of the confluence with the Broad River.	None	+2,066	
Flat Creek (into French Broad River).	At NC Highway 251	None	+1,770	Unincorporated Areas of Buncombe County.
	Approximately 1,870 feet upstream of Chambers Road.	None	+2,205	
Flat Creek (into Swannanoa River).	At the confluence with Swannanoa River	+2,356	+2,362	Town of Black Mountain, Town of Montreat.
	Just downstream of Kentucky Road	None	+2,686	
Tributary 1	At the confluence with Flat Creek (into Swannanoa River).	+2,380	+2,379	Town of Black Mountain.
	Approximately 830 feet upstream of NC Highway 9	None	+2,458	
Fourmile Branch	Approximately 2,000 feet upstream of the confluence with French Broad River.	+2,001	+2,002	Unincorporated Areas of Buncombe County, City of Asheville, Town of Biltmore Forest.
	Approximately 90 feet downstream of U.S. Highway 25.	None	+2,193	
French Broad River Tributary 149.	At the confluence with French Broad River	None	+2,046	Unincorporated Areas of Buncombe County.
	Approximately 1,420 feet upstream of River Glen Drive.	None	+2,192	
Gap Creek	At the confluence with Cane Creek	None	+2,163	Unincorporated Areas of Buncombe County.
	Approximately 210 feet upstream of Windsong Drive	None	+2,359	
Garren Creek	At the confluence with Cane Creek	None	+2,294	Unincorporated Areas of Buncombe County.
	Approximately 250 feet upstream of Bleeker Lane	None	+2,382	
Gashes Creek	At the confluence with Swannanoa River	+2,021	+2,023	Unincorporated Areas of Buncombe County, City of Asheville.
	Approximately 1,680 feet upstream of U.S. Highway 74.	None	+2,225	
George Branch	At the confluence with Hominy Creek	None	+2,178	Unincorporated Areas of Buncombe County.
	Approximately 400 feet upstream of Curtis Farm Road (State Road 1101).	None	+2,208	
Gill Branch	Approximately 50 feet upstream of the confluence with Reems Creek.	+1,965	+1,966	Town of Weaverville.
	Approximately 100 feet upstream of Weaver Boulevard (State Road 1725).	None	+2,111	
Glady Fork	At the confluence with South Hominy Creek	None	+2,292	Unincorporated Areas of Buncombe County.
	Approximately 1,360 feet upstream of Black Oak Cove Road (State Road 3464).	None	+2,362	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Gouches Branch	Approximately 1,000 feet upstream of the confluence with Newfound Creek.	+1,976	+1,977	Unincorporated Areas of Buncombe County.
	Approximately 480 feet upstream of Gouches Branch Road (State Road 1377).	None	+2,012	
Grassy Branch	At the confluence with Swannanoa River	+2,054	+2,057	Unincorporated Areas of Buncombe County, City of Asheville.
	Approximately 0.4 mile upstream of Upper Grassy Branch Road (State Road 2400).	None	+2,229	
Gregg Branch	Approximately 25 feet upstream of the confluence with Beetree Creek.	+2,242	+2,243	Unincorporated Areas of Buncombe County.
	Approximately 1,080 feet upstream of Old Bee Tree Road (State Road 2418).	None	+2,304	
Haw Creek	At the confluence with Swannanoa River	+2,007	+2,010	City of Asheville.
	Approximately 1,800 feet upstream of the confluence with the Swannanoa River.	+2,012	+2,013	
Herron Cove Branch	Approximately 50 feet upstream of the confluence with Reems Creek.	None	+2,032	Town of Weaverville.
	Approximately 230 feet upstream of Fontana Drive	None	+2,086	
Hogeye Branch	At the confluence with Sandy Mush Creek	None	+2,184	Unincorporated Areas of Buncombe County.
	Approximately 0.6 mile upstream of Hogeye Road (State Road 1393).	None	+2,314	
Hominy Creek	Just upstream of Morgan Cove Road (State Road 1141).	None	+2,178	Unincorporated Areas of Buncombe County.
	Approximately 150 feet upstream of the Buncombe/Haywood County boundary.	None	+2,252	
Tributary 21	Approximately 100 feet upstream of the confluence with Hominy Creek.	+2,098	+2,099	Unincorporated Areas of Buncombe County.
	Approximately 1,520 feet upstream of Lindsey Road (State Road 1128).	None	+2,107	
Tributary 25	Approximately 75 feet upstream of the confluence with Hominy Creek.	None	+2,152	Unincorporated Areas of Buncombe County.
	Approximately 780 feet upstream of North Morgan Branch Road (State Road 1140).	None	+2,191	
Ivy Creek	At the Buncombe/Madison County boundary	None	+1,908	Unincorporated Areas of Buncombe County.
	Approximately 550 feet upstream of NC Highway 197	+2,112	+2,111	
Killian Branch	Approximately 250 feet upstream of the confluence with Beaverdam Creek (into French Broad River).	None	+2,120	City of Asheville.
	Approximately 1.0 mile upstream of Inglewood Road	None	+2,288	
Lee Creek	Approximately 320 feet upstream of the confluence with French Broad River.	None	+1,890	Unincorporated Areas of Buncombe County.
	Approximately 0.5 mile upstream of Roberts Road (State Road 1314).	None	+2,362	
Little Piney Branch	At the confluence with Flat Creek (into Swannanoa River).	None	+2,558	Town of Montreat.
	Approximately 1,810 feet upstream of Harmony Road Extension.	None	+3,351	
Long Branch (into Beetree Creek).	At the confluence with Beetree Creek	None	+2,299	Unincorporated Areas of Buncombe County.
	Approximately 0.5 mile upstream of Long Branch Road (State Road 2429).	None	+3,083	
Long Branch (into Sandy Mush Creek).	At the confluence with Sandy Mush Creek	None	+2,397	Unincorporated Areas of Buncombe County.
	Approximately 90 feet upstream of Boyd Cove Road (State Road 1398).	None	+2,530	
Maney Branch	At the confluence with Reems Creek	None	+2,395	Unincorporated Areas of Buncombe County.
	Approximately 220 feet upstream of Beech Spring Drive.	None	+2,460	
Martin Branch	At the confluence with Turkey Creek	None	+1,976	Unincorporated Areas of Buncombe County.
	Approximately 1,250 feet upstream of Martin Branch Road (State Road 1610).	None	+2,018	
Martin Creek	At the confluence with North Fork Ivy Creek	None	+2,378	Unincorporated Areas of Buncombe County.
	Approximately 1,460 feet upstream of Martins Creek Road (State Road 2027).	None	+2,506	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
McKinnish Branch	At the confluence with Smith Mill Creek	+2,104	+2,105	Unincorporated Areas of Buncombe County, City of Asheville.
	Approximately 150 feet upstream of McKinnish Cove Road (State Road 1320).	None	+2,195	
Moore Creek	Just upstream of Monte Vista Road (State Road 1224).	None	+2,202	Unincorporated Areas of Buncombe County.
	Approximately 0.5 mile upstream of Holcombe Cove Road (State Road 1236).	None	+2,380	
Morgan Branch (into Ivy Creek).	At the confluence with Ivy Creek	None	+2,059	Unincorporated Areas of Buncombe County.
	Approximately 770 feet upstream of Arrowood Road (State Road 2155).	None	+2,072	
Morgan Branch (into South Hominy Creek).	At the confluence with South Hominy Creek	None	+2,235	Unincorporated Areas of Buncombe County.
	Approximately 830 feet upstream of Blackfoot Trail	None	+2,276	
Newfound Creek	Approximately 75 feet upstream of the confluence with French Broad River.	None	+1,876	Unincorporated Areas of Buncombe County.
	Approximately 90 feet upstream of Newfound Road (State Road 1104).	None	+2,388	
Tributary 17	At the confluence with Newfound Creek	None	+1,955	Unincorporated Areas of Buncombe County.
	Approximately 330 feet upstream of Sunview Drive	None	+1,958	
Tributary 26	Approximately 400 feet upstream of the confluence with Newfound Creek.	+2,011	+2,012	Unincorporated Areas of Buncombe County.
	Approximately 620 feet upstream of Old Newfound Road (State Road 1378).	None	+2,023	
North Fork Ivy Creek	Approximately 50 feet upstream of the confluence with Dillingham Creek and Ivy Creek.	+2,185	+2,186	Unincorporated Areas of Buncombe County.
	Approximately 100 feet downstream of Burleson Branch Road (State Road 2079).	None	+2,533	
North Fork Swannanoa River	At the confluence with Swannanoa River	+2,232	+2,231	Unincorporated Areas of Buncombe County, Town of Black Mountain.
	Approximately 3.0 miles upstream of North Fork Right Fork Road (State Road 2476).	None	+2,762	
North Turkey Creek	At the confluence with South Turkey Creek and Turkey Creek.	None	+2,027	Unincorporated Areas of Buncombe County.
	Approximately 0.7 mile upstream of Bryant Lane	None	+2,234	
Ox Creek	At the confluence with Reems Creek	None	+2,182	Unincorporated Areas of Buncombe County.
	Approximately 30 feet upstream of Ox Creek Road (State Road 2109).	None	+2,420	
Tributary 1	At the confluence with Ox Creek	None	+2,382	Unincorporated Areas of Buncombe County.
	Approximately 620 feet upstream of the confluence with Ox Creek.	None	+2,402	
Parker Branch	At the confluence with Newfound Creek	None	+1,939	Unincorporated Areas of Buncombe County.
	Approximately 1,150 feet upstream of the confluence with Newfound Creek.	None	+1,944	
Pole Creek	Just upstream of Dogwood Road (State Road 1220)	None	+2,100	Unincorporated Areas of Buncombe County, City of Asheville.
	Approximately 270 feet upstream of Milksick Cove Road (State Road 1215).	None	+2,301	
Potato Branch	At the confluence with South Turkey Creek	None	+2,318	Unincorporated Areas of Buncombe County.
	Approximately 940 feet upstream of the confluence with South Turkey Creek.	None	+2,335	
Poverty Branch	At the confluence with North Fork Ivy Creek	None	+2,210	Unincorporated Areas of Buncombe County.
	Approximately 0.9 mile upstream of the confluence with North Fork Ivy Creek.	None	+2,293	
Puncheon Branch	At the confluence with Flat Creek (into Swannanoa River).	None	+2,617	Town of Montreat.
	Approximately 1,350 feet upstream of Oklahoma Road.	None	+3,296	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Ragsdale Creek	Approximately 0.8 mile upstream of Sand Hill Road (State Road 3412).	None	+2,064	Unincorporated Areas of Buncombe County, City of Asheville.
	Approximately 40 feet upstream of Willow Pond Lane	None	+2,397	
Reed Creek	At Murdock Avenue	None	+2,087	City of Asheville.
	Approximately 360 feet downstream of Grovewood Road.	None	+2,219	
Tributary 2	Approximately 320 feet upstream of the confluence with Reed Creek.	+2,009	+2,010	City of Asheville.
	Approximately 280 feet upstream of Broadway Street	None	+2,017	
Tributary 6	Approximately 225 feet upstream of the confluence with Reed Creek.	None	+2,088	City of Asheville.
	Approximately 140 feet upstream of Hillside Street	None	+2,141	
Reems Creek	At NC Highway 251	None	+1,799	Unincorporated Areas of Buncombe County, Town of Weaverville.
	Approximately 90 feet downstream of Blackberry Inn Road (State Road 2115).	None	+2,526	
Reeves Creek	At the confluence with Reems Creek	None	+2,262	Unincorporated Areas of Buncombe County.
	Approximately 0.4 mile upstream of Lula Cove Road	None	+2,392	
Robinson Creek	At the confluence with Cane Creek	+2,098	+2,094	Unincorporated Areas of Buncombe County.
	Approximately 170 feet upstream of Concord Road (State Road 3150).	None	+2,264	
Rock Creek	At the confluence with Broad River	None	+2,089	Unincorporated Areas of Buncombe County.
	Approximately 1,230 feet upstream of Press Owenby Drive.	None	+2,582	
Ross Creek	At the confluence with Swannanoa River	+2,002	+2,004	City of Asheville.
	Approximately 20 feet downstream of Vance Gap Road.	None	+2,347	
Round Hill Branch	Approximately 500 feet upstream of the confluence with Newfound Creek.	+2,043	+2,046	Unincorporated Areas of Buncombe County.
	Approximately 860 feet upstream of Green Valley Road (State Road 1383).	None	+2,138	
Sams Branch	At the confluence with South Hominy Creek	None	+2,375	Unincorporated Areas of Buncombe County.
	Approximately 1,220 feet upstream of Falling Brook Drive.	None	+2,549	
Sandy Mush Creek	Approximately 400 feet upstream of the confluence with French Broad River.	None	+1,728	Unincorporated Areas of Buncombe County.
	Approximately 840 feet upstream of Garrett Cove Road (State Road 1392).	None	+2,635	
Saw Branch	At the confluence with South Hominy Creek	None	+2,412	Unincorporated Areas of Buncombe County.
	Approximately 1,350 feet upstream of the confluence with South Hominy Creek.	None	+2,476	
Sluder Branch	At the confluence with Newfound Creek	None	+1,964	Unincorporated Areas of Buncombe County.
	Approximately 1,580 feet upstream of Branchview Drive.	None	+2,002	
Smith Mill Creek	Approximately 950 feet upstream of the confluence with French Broad River.	+1,978	+1,977	Unincorporated Areas of Buncombe County, City of Asheville.
	Approximately 0.4 mile upstream of Johnston School Road (State Road 1319).	None	+2,201	
South Hominy Creek	Approximately 220 feet upstream of the confluence with Hominy Creek.	+2,101	+2,102	Unincorporated Areas of Buncombe County.
	Approximately 400 feet upstream of Davis Creek Road (State Road 1103).	None	+2,560	
Tributary 2	At the confluence with South Hominy Creek	None	+2,150	Unincorporated Areas of Buncombe County.
	Approximately 40 feet upstream of Bailey Road (State Road 3452).	None	+2,181	
South Turkey Creek	At the confluence with North Turkey Creek and Turkey Creek.	None	+2,027	Unincorporated Areas of Buncombe County.
	Approximately 10 feet downstream of South Turkey Creek Road (State Road 1384).	None	+2,346	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Stanfield Branch	At the confluence with Dick Branch	None	+1,952	Unincorporated Areas of Buncombe County.
	Approximately 50 feet upstream of the confluence of Stanfield Branch Tributary 2.	None	+2,083	
Tributary 2	At the confluence with Stanfield Branch	None	+2,081	Unincorporated Areas of Buncombe County.
	Approximately 1,620 feet upstream of the confluence with Stanfield Branch.	None	+2,127	
Stony Fork	At the confluence with South Hominy Creek	None	+2,312	Unincorporated Areas of Buncombe County.
	Approximately 50 feet upstream of NC Highway 151	None	+2,613	
Sugar Cove	At the confluence with Reems Creek	None	+2,299	Unincorporated Areas of Buncombe County.
	Approximately 540 feet upstream of Sugar Cove Road (State Road 2114).	None	+2,435	
Sugar Creek	At the confluence with Sandy Mush Creek	None	+2,162	Unincorporated Areas of Buncombe County.
	Approximately 140 feet upstream of Andy's Branch	None	+2,247	
Swannanoa River	Approximately 1,000 feet upstream of the confluence with French Broad River.	+1,990	+1,991	Unincorporated Areas of Buncombe County, City of Asheville, Town of Biltmore Forest, Town of Black Mountain.
	Approximately 1,680 feet upstream of Dunsmore Avenue (State Road 2531).	None	+2,518	
Tributary 24	At the confluence with Swannanoa River	None	+2,182	Unincorporated Areas of Buncombe County.
	Approximately 0.8 mile upstream of Patton Hill Road	None	+2,403	
Tributary 26	At the confluence with Swannanoa River	None	+2,198	Unincorporated Areas of Buncombe County.
	Approximately 110 feet upstream of Druid Hill Road (State Road 2445).	None	+2,456	
Tributary 28	At the confluence with Swannanoa River	None	+2,206	Unincorporated Areas of Buncombe County.
	Approximately 0.8 mile upstream of the confluence of Swannanoa River Tributary of Tributary 28.	None	+2,447	
Tributary 33	At the confluence with Swannanoa River	None	+2,242	Unincorporated Areas of Buncombe County, Town of Black Mountain.
	Approximately 40 feet downstream of Wagon Trail	None	+2,331	
Tributary 35	At the confluence with Swannanoa River	+2,366	+2,365	Town of Black Mountain.
	Approximately 710 feet upstream of Avena Road	None	+2,432	
Tributary of Tributary 26	At the confluence with Swannanoa River Tributary 26	None	+2,270	Unincorporated Areas of Buncombe County.
	Approximately 110 feet upstream of Druid Hill Road (State Road 2445).	None	+2,462	
Tributary of Tributary 28	At the confluence with Swannanoa River Tributary 28	None	+2,273	Unincorporated Areas of Buncombe County.
	Approximately 190 feet upstream of Woodland Drive (State Road 2460).	None	+2,642	
Tributary of Tributary 33	At the confluence with Swannanoa River Tributary 33	None	+2,285	Unincorporated Areas of Buncombe County, Town of Black Mountain.
	Approximately 0.4 mile upstream of the confluence with Swannanoa River Tributary 33.	None	+2,329	
Sweeten Creek	At the confluence with Swannanoa River	+1,998	+1,997	City of Asheville.
	Approximately 1,800 feet upstream of U.S. Highway 25.	None	+2,299	
Tributary 2	At the confluence with Sweeten Creek	+2,009	+2,010	City of Asheville.
	Approximately 60 feet upstream of Shady Oak Drive	None	+2,069	
Tributary 3	At the confluence with Sweeten Creek	+2,017	+2,018	City of Asheville.
	Approximately 1,370 feet upstream of Forest Street	None	+2,206	
Taylor Creek	The Buncombe/Rutherford County boundary	None	+2,000	Unincorporated Areas of Buncombe County.
	Approximately 1,000 feet upstream of the Buncombe/Rutherford County boundary.	None	+2,034	
Tomahawk Branch	At the confluence with Swannanoa River	+2,284	+2,287	Town of Black Mountain.
	Approximately 490 feet upstream of Hiawassee Avenue (State Road 2495).	None	+2,383	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Town Branch Creek	At the confluence with Dillingham Creek	None	+2,436	Unincorporated Areas of Buncombe County
	Approximately 190 feet upstream of Martin Lane (State Road 2165).	None	+2,768	
Trantham Creek	At the confluence with Cane Creek	None	+2,265	Unincorporated Areas of Buncombe County.
	Approximately 960 feet upstream of Ivy Cove Road ...	None	+2,391	
Trent Branch	Approximately 300 feet upstream of the confluence with Ragsdale Creek.	None	+2,024	City of Asheville.
	Approximately 0.5 mile upstream of I–40	None	+2,064	
Tributary to Camp Branch	At the confluence with Camp Branch	+2,346	+2,345	Unincorporated Areas of Buncombe County, Town of Black Mountain.
	Approximately 1,060 feet upstream of NC Highway 9	None	+2,477	
Tributary to Tributary to Camp Branch.	At the confluence with Tributary to Camp Branch	None	+2,363	Unincorporated Areas of Buncombe County, Town of Black Mountain.
	Approximately 590 feet upstream of Settings Boulevard.	None	+2,517	
Turkey Creek	At the confluence with Sandy Mush Creek	None	+1,772	Unincorporated Areas of Buncombe County.
	At the confluence with North Turkey Creek and South Turkey Creek.	None	+2,027	
Warren Creek	At the confluence with South Hominy Creek	None	+2,304	Unincorporated Areas of Buncombe County.
	Approximately 1,860 feet upstream of the confluence with South Hominy Creek.	None	+2,336	
Webb Branch	Approximately 900 feet upstream of the confluence with Hominy Creek.	None	+2,142	Unincorporated Areas of Buncombe County.
	Approximately 0.4 mile upstream of U.S. Highway 25/19.	None	+2,203	
Williams Branch	At the confluence with Dillingham Creek	None	+2,285	Unincorporated Areas of Buncombe County.
	Approximately 1.3 miles upstream of Williams Branch Road (State Road 2174).	None	+3,133	
Willow Creek	At the confluence with Sandy Mush Creek	None	+2,266	Unincorporated Areas of Buncombe County.
	Approximately 80 feet upstream of Willow Cove Road (State Road 1395).	None	+2,544	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Asheville
Maps are available for inspection at Asheville City Hall, 70 Court Plaza, Asheville, NC.

Town of Biltmore Forest
Maps are available for inspection at Biltmore Forest Town Hall, 355 Vanderbilt Road, Biltmore Forest, NC.

Town of Black Mountain
Maps are available for inspection at Black Mountain Town Hall, 102 Montreat Road, Black Mountain, NC.

Town of Montreat
Maps are available for inspection at Montreat Town Hall, 96 Rainbow Terrace, Montreat, NC.

Town of Weaverville
Maps are available for inspection at Weaverville Town Hall, 30 South Main Street, Weaverville, NC.

Town of Woodfin
Maps are available for inspection at Woodfin Town Hall, 90 Elk Mountain Road, Woodfin, NC.

Unincorporated Areas of Buncombe County
Maps are available for inspection at Buncombe County Planning Department, 46 Valley Street, Asheville, NC.

Davidson County, North Carolina, and Incorporated Areas

Abbotts Creek	At the confluence with Yadkin River	None	+625	Unincorporated Areas of Davidson County, City of Lexington.
	Approximately 0.8 mile upstream of the confluence of Pounder Fork.	None	+629	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 1	Approximately 200 feet downstream of Cascade Drive	+767	+768	Unincorporated Areas of Davidson County.
	Approximately 1,140 feet upstream of Cascade Drive	None	+790	
Alls Fork	Approximately 600 feet downstream of the Davidson/Montgomery County boundary.	None	+511	Unincorporated Areas of Davidson County.
	Approximately 670 feet upstream of Badin Lake Road (State Road 2550).	None	+512	
Battle Branch	At the confluence with Abbotts Creek	None	+625	Unincorporated Areas of Davidson County.
	Approximately 0.9 mile upstream of Silver Hill Road (State Road 2315).	None	+722	
Beaverdam Creek	At the Davidson/Montgomery County boundary	None	+511	Unincorporated Areas of Davidson County.
	Approximately 1,080 feet upstream of Badin Lake Road (State Road 2550).	None	+515	
Brier Creek	At the Davidson/Randolph County boundary	None	+547	Unincorporated Areas of Davidson County.
	At the confluence of Conrad Hill Branch	None	+573	
Tributary	At the confluence with Brier Creek	None	+548	Unincorporated Areas of Davidson County.
	Approximately 190 feet upstream of Denton Road (State Road 2183).	None	+784	
Brushy Fork	Approximately 950 feet upstream of the confluence with Abbotts Creek.	None	+689	Unincorporated Areas of Davidson County, Town of Wallburg.
	At the Davidson/Forsyth County boundary	None	+850	
Tributary 2	At the confluence with Brushy Fork	None	+749	Unincorporated Areas of Davidson County.
	Approximately 1.2 miles upstream of the confluence with Brushy Fork.	None	+791	
Buck Branch	At the confluence with Brushy Fork	None	+697	Unincorporated Areas of Davidson County.
	Approximately 310 feet upstream of Hunter Road (State Road 1814).	None	+748	
Tributary 1	At the confluence with Buck Branch	None	+705	Unincorporated Areas of Davidson County.
	Approximately 0.6 mile upstream of the confluence with Buck Branch.	None	+727	
Cabin Creek	At the confluence with Yadkin River	None	+576	Unincorporated Areas of Davidson County.
	Approximately 1,840 feet upstream of NC Highway 49	None	+753	
Cain Creek	Approximately 0.8 mile upstream of the confluence with Leonard Creek.	None	+779	Unincorporated Areas of Davidson County.
	Approximately 1.1 miles upstream of the confluence with Leonard Creek.	None	+793	
Charles Creek	Approximately 450 feet upstream of the confluence with Hamby Creek.	None	+773	City of Thomasville.
	Approximately 220 feet downstream of Fairgrove Road.	None	+827	
Churchland Creek	At the confluence with Potts Creek and South Potts Creek.	None	+695	Unincorporated Areas of Davidson County.
	Approximately 900 feet upstream of Fox Run Trail	None	+753	
Conrad Hill Branch	At the confluence with Brier Creek	None	+573	Unincorporated Areas of Davidson County.
	Approximately 460 feet upstream of Railroad	None	+805	
Cool Branch	At the confluence with Brushy Fork	None	+717	Unincorporated Areas of Davidson County.
	Approximately 200 feet upstream of Friendship-Ledford Road (State Road 1700).	None	+848	
Dunkers Creek	At the confluence with Dykers Creek	None	+682	Unincorporated Areas of Davidson County.
	Approximately 130 feet upstream of Marshall Byerly Road (State Road 1442).	None	+712	
Dykers Creek	At the confluence with Yadkin River	None	+673	Unincorporated Areas of Davidson County.
	Approximately 550 feet upstream of the confluence with Dykers Creek Tributary 3.	None	+701	
Tributary	At the confluence with Dykers Creek	None	+694	Unincorporated Areas of Davidson County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1.2 miles upstream of U.S. Highway 64	None	+778	
Tributary 3	At the confluence with Dykers Creek	None	+699	Unincorporated Areas of Davidson County.
	Approximately 0.7 mile upstream of U.S. Highway 64	None	+739	
Ellis Creek	At the confluence with Yadkin River	None	+571	Unincorporated Areas of Davidson County.
	Approximately 670 feet upstream of Mose Glover Road (State Road 2540).	None	+653	
Tributary	At the confluence with Ellis Creek	None	+571	Unincorporated Areas of Davidson County.
	Approximately 0.5 mile upstream of Newsome Road (State Road 2538).	None	+666	
Farabee Creek	At the confluence with Yadkin River	None	+650	Unincorporated Areas of Davidson County.
	At the confluence of Frost Creek and Swan Creek	None	+650	
Flat Swamp Creek	At the confluence with Yadkin River	None	+625	Unincorporated Areas of Davidson County.
	Approximately 1.1 miles upstream of New Cut Road (State Road 2262).	None	+813	
Fourmile Branch	At the confluence with Flat Swamp Creek	None	+625	Unincorporated Areas of Davidson County.
	Approximately 470 feet upstream of East Old U.S. 64 Highway (State Road 2205).	None	+763	
Frost Creek	At the confluence of Farabee Creek and Swan Creek	None	+650	Unincorporated Areas of Davidson County.
	Approximately 0.7 mile upstream of Henry Lomax Road (State Road 1163).	None	+676	
Fryes Creek	At the confluence with Muddy Creek	None	+689	Unincorporated Areas of Davidson County.
	Approximately 1,700 feet upstream of Payne Road (State Road 1505).	+754	+755	
Gobble Creek	At the confluence with Yadkin River	None	+672	Unincorporated Areas of Davidson County.
	Approximately 1.0 mile upstream of Andrew Sink Road (State Road 1190).	None	+774	
Hamby Creek	Approximately 350 feet upstream of the confluence of Warner Creek.	None	+816	Unincorporated Areas of Davidson County, City of Thomasville.
	Approximately 1,000 feet upstream of Liberty Drive	None	+831	
Tributary	Approximately 1,000 feet downstream of Upper Lake Road (State Road 2024).	None	+672	Unincorporated Areas of Davidson County, City of Thomasville.
	Approximately 600 feet upstream of Ford Street	None	+801	
Tributary 1	Approximately 175 feet upstream of the confluence with Hamby Creek.	+735	+736	Unincorporated Areas of Davidson County, City of Thomasville.
	Approximately 160 feet upstream of East Holly Grove Road.	None	+808	
Hanks Branch	Approximately 500 feet upstream of the confluence with Hunts Fork.	+701	+702	City of Thomasville.
	Approximately 30 feet downstream of Cox Avenue	None	+808	
Hasty Creek	Approximately 10 feet downstream of Payne Road (State Road 1779).	None	+770	Unincorporated Areas of Davidson County, City of Thomasville.
	Approximately 450 feet upstream of National Highway	None	+858	
Huffmans Creek	At the confluence with Reedy Creek	None	+690	Unincorporated Areas of Davidson County.
	Approximately 870 feet upstream of Enterprise Road (State Road 1499).	None	+761	
Indian Grave Creek	Approximately 100 feet upstream of Happy Hill Road (State Road 1231).	None	+716	Unincorporated Areas of Davidson County.
	Approximately 1.9 miles upstream of Happy Hill Road (State Road 1231).	None	+778	
Jefferson Village Tributary	Approximately 50 feet upstream of the confluence with Jefferson Village Branch.	+673	+674	Unincorporated Areas of Davidson County, City of Lexington.
	Approximately 1,800 feet upstream of the confluence with Jefferson Village Branch.	+691	+721	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Jersey Creek	At the confluence with Swearing Creek	None	+626	Unincorporated Areas of Davidson County.
	Approximately 1,150 feet upstream of Railroad	None	+734	
Kennedy Mill Creek	Approximately 500 feet upstream of the confluence with Rich Fork.	+704	+705	Unincorporated Areas of Davidson County.
	At the Davidson/Guilford County boundary	None	+801	
Tributary 1	At the confluence with Kennedy Mill Creek	None	+740	Unincorporated Areas of Davidson County, City of Thomasville.
	At the Davidson/Guilford County boundary	None	+808	
Lick Creek	At the confluence with Yadkin River	None	+576	Unincorporated Areas of Davidson County, Town of Denton.
	Approximately 690 feet upstream of Cid Road (State Road 2318).	None	+697	
Little Brushy Fork	At the confluence with Brushy Fork	None	+732	Unincorporated Areas of Davidson County.
	Approximately 1.8 miles upstream of Tom Livengood Road (State Road 1719).	None	+861	
Tributary 1	At the confluence with Little Brushy Fork	None	+748	Unincorporated Areas of Davidson County.
	Approximately 0.7 mile upstream of the confluence of Little Brushy Fork Tributary 1A.	None	+781	
Tributary 1A	At the confluence with Little Brushy Fork Tributary 1	None	+757	Unincorporated Areas of Davidson County.
	Approximately 2,000 feet upstream of Garden Valley Drive.	None	+786	
Little Uwharrie River	At the Davidson/Randolph County boundary	None	+553	Unincorporated Areas of Davidson County.
	Approximately 110 feet upstream of the confluence with Little Uwharrie River Tributary 3.	None	+602	
Tributary 10	Approximately 20 feet downstream of the Davidson/Randolph County boundary.	None	+858	Unincorporated Areas of Davidson County.
	Approximately 20 feet upstream of the Davidson/Randolph County boundary.	None	+858	
Tributary 11	Approximately 10 feet downstream of the Davidson/Randolph County boundary.	None	+848	Unincorporated Areas of Davidson County.
	Approximately 20 feet upstream of the Davidson/Randolph County boundary.	None	+848	
Tributary 11A	At the Davidson/Randolph County boundary	None	+876	Unincorporated Areas of Davidson County.
	Approximately 40 feet downstream of the Davidson/Randolph County boundary.	None	+876	
Tributary 2	At the confluence with Little Uwharrie River	None	+576	Unincorporated Areas of Davidson County.
	Approximately 620 feet downstream of Underwood Drive (State Road 2157).	None	+679	
Tributary 3	At the confluence with Little Uwharrie River	None	+601	Unincorporated Areas of Davidson County.
	Approximately 0.5 mile upstream of the confluence with the Little Uwharrie River.	None	+643	
Long Branch	At the confluence with Brushy Fork	None	+754	Unincorporated Areas of Davidson County.
	Approximately 1.0 mile upstream of the confluence with Brushy Fork.	None	+781	
Mary Reich Creek	Approximately 70 feet downstream of the Davidson/Forsyth County boundary.	None	+811	Unincorporated Areas of Davidson County.
	At the Davidson/Forsyth County boundary	None	+811	
Mill Creek	At the confluence with Yadkin River	None	+666	Unincorporated Areas of Davidson County.
	Approximately 1.0 mile upstream of Tyro School Road (State Road 1180).	None	+740	
Miller Creek	At the confluence with Muddy Creek	None	+690	Unincorporated Areas of Davidson County.
	Approximately 250 feet upstream of North Payne Road (State Road 1510).	+810	+811	
Mountain Branch	At the Davidson/Montgomery County boundary	None	+601	Unincorporated Areas of Davidson County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 60 feet upstream of the Davidson/Montgomery County boundary.	None	+601	
Muddy Creek	At the confluence with Yadkin River	None	+685	Unincorporated Areas of Davidson County.
	At the Davidson/Forsyth County boundary	None	+691	
North Hamby Creek	Approximately 50 feet upstream of Mason Way	None	+854	Unincorporated Areas of Davidson County, City of Thomasville.
	Approximately 960 feet upstream of Railroad	None	+872	
North Potts Creek	At the confluence with Yadkin River	None	+629	Unincorporated Areas of Davidson County.
	Approximately 0.4 mile upstream of Sam Shape Road (State Road 1134).	+639	+640	
Oil Mill Branch	At the confluence with Brushy Fork	None	+707	Unincorporated Areas of Davidson County.
	Approximately 800 feet upstream of Disher Road (State Road 1805).	None	+740	
Potts Creek	At the confluence with South Potts Creek	None	+695	Unincorporated Areas of Davidson County.
	Approximately 1,560 feet upstream of Ed Rickard Road (State Road 1161).	None	+719	
Pounder Fork	At the confluence with Abbotts Creek	None	+625	Unincorporated Areas of Davidson County.
	Approximately 420 feet upstream of Smith Farm Road (State Road 2015).	None	+811	
Tributary	At the confluence with Pounder Fork	None	+744	Unincorporated Areas of Davidson County.
	Approximately 150 feet downstream of Robert Beck Road (State Road 2226).	None	+780	
Tributary 1	Approximately 400 feet upstream of the confluence with Pounder Fork.	None	+648	Unincorporated Areas of Davidson County.
	Approximately 130 feet upstream of John Young Road (State Road 2246).	None	+740	
Reedy Creek	At the confluence with Yadkin River	None	+682	Unincorporated Areas of Davidson County.
	Approximately 1,250 feet upstream of George Hege Road (State Road 1504).	None	+777	
Rich Fork	At the upstream side of Westover Road (State Road 1738).	None	+781	City of High Point.
	Approximately 0.6 mile upstream of Westover Road	None	+792	
Tributary 2	Approximately 200 feet upstream of the confluence of Rich Fork Tributary 2A.	None	+790	Unincorporated Areas of Davidson County.
	Approximately 700 feet upstream of the confluence of Rich Fork Tributary 2A.	None	+793	
Tributary 2	At the confluence with Rich Fork	None	+782	City of High Point.
	At the Davidson/Guilford County boundary	None	+807	
Tributary 2A	At the confluence with Rich Fork Tributary 2	None	+788	City of High Point.
	Approximately 900 feet upstream of the confluence with Rich Fork Tributary.	None	+798	
South Fork Muddy Creek	At the confluence with Muddy Creek	None	+690	Unincorporated Areas of Davidson County.
	At the Davidson/Forsyth County boundary	None	+691	
South Potts Creek	At the confluence with North Potts Creek	None	+629	Unincorporated Areas of Davidson County.
	At the confluence of Churchland Creek and Potts Creek.	None	+695	
Tributary	At the confluence with South Potts Creek	+636	+642	Unincorporated Areas of Davidson County.
	Approximately 0.4 mile upstream of the confluence with South Potts Creek.	+643	+642	
Spencer Creek	Approximately 125 feet upstream of the confluence with Hamby Creek.	None	+797	Unincorporated Areas of Davidson County, City of Thomasville.
	Approximately 0.4 mile upstream of Liberty Drive	None	+863	
Spurgeon Creek	Approximately 100 feet upstream of Sells Farm Road	None	+818	Unincorporated Areas of Davidson County.
	Approximately 230 feet upstream of Sells Farm Road	None	+819	
Tributary 1	Approximately 850 feet upstream of the confluence with Spurgeon Creek.	None	+751	Unincorporated Areas of Davidson County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 430 feet upstream of Willie Bodenheimer Road (State Road 1746).	None	+781	
Tributary 2	Approximately 850 feet upstream of the confluence with Spurgeon Creek.	None	+781	Unincorporated Areas of Davidson County, Town of Wallburg.
	Approximately 1,870 feet upstream of North Creekside Drive.	None	+793	Town of Wallburg.
Swan Creek	At the confluence with Farabee Creek and Frost Creek.	None	+650	Unincorporated Areas of Davidson County.
	Approximately 0.6 mile upstream of Boones Cave Road.	None	+665	
Swearing Creek	At the confluence with Yadkin River	None	+626	Unincorporated Areas of Davidson County.
	Approximately 1.2 miles upstream of Will Lanier Road (State Road 1460).	None	+813	
Tributary 1	At the confluence with Swearing Creek	None	+626	Unincorporated Areas of Davidson County.
	Approximately 0.5 mile upstream of Rockcrusher Road (State Road 1114).	None	+634	
Tributary 2	Approximately 700 feet upstream of the confluence with Swearing Creek.	None	+654	Unincorporated Areas of Davidson County, City of Lexington.
	Approximately 0.4 mile upstream of the confluence with Swearing Creek.	None	+670	
Tar Creek	Approximately 0.5 mile upstream of the confluence with Swearing Creek.	None	+644	Unincorporated Areas of Davidson County.
	Approximately 1.1 miles upstream of the confluence with Swearing Creek.	None	+654	
Ward Creek	Approximately 100 feet upstream of the confluence with Hamby Creek.	None	+740	City of Thomasville.
	Approximately 740 feet upstream of Fisher Ferry Road.	None	+800	
Yadkin River	Approximately 400 feet downstream of the Davidson/Montgomery County boundary.	None	+566	Unincorporated Areas of Davidson County.
	At the Davidson/Forsyth County boundary	None	+691	
Tributary 2	At the confluence with Yadkin River	None	+689	Unincorporated Areas of Davidson County.
	Approximately 1.0 mile upstream of the confluence with Yadkin River.	None	+740	

* National Geodetic Vertical Datum.
\# Depth in feet above ground.
\+ North American Vertical Datum.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of High Point

Maps are available for inspection at City of High Point, 211 South Hamilton Street, High Point, NC

City of Lexington

Maps are available for inspection at City of Lexington, 28 West Center Street, Lexington, NC.

City of Thomasville

Maps are available for inspection at Thomasville City Hall, 10 Salem Street, Thomasville, NC.

Town of Denton

Maps are available for inspection at Denton Town Hall, P.O. Box 306/201 West Salisbury Street, Denton, NC.

Town of Wallburg

Maps are available for inspection at Town of Wallburg, 204 Linville Court, Kernersville, NC.

Unincorporated Areas of Davidson County

Maps are available for inspection at Davidson County Governmental Center, Planning and Zoning Department, 913 Greensboro Street, Lexington, NC.

Madison County, North Carolina, and Incorporated Areas

Anderson Branch	At the confluence with French Broad River	+1,534	+1,535	Unincorporated Areas of Madison County.
	Approximately 1.5 miles upstream of the confluence with French Broad River.	None	+1,954	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Banjo Branch	At the confluence with Gabriel Creek	+2,190	+2,198	Unincorporated Areas of Madison County, Town of Mars Hill.
	Approximately 800 feet upstream of Forest Street (State Road 1356).	None	+2,401	
Barrett Branch	At the confluence with Little Sandymush Creek	None	+2,199	Unincorporated Areas of Madison County.
	Approximately 900 feet upstream of the confluence with Little Sandymush Creek.	None	+2,224	
Big Branch	At the confluence with Little Ivy Creek	None	+2,011	Unincorporated Areas of Madison County.
	Approximately 230 feet upstream of I–26/U.S. 19	None	+2,223	
Tributary 2	At the confluence with Big Branch	None	+2,118	Unincorporated Areas of Madison County, Town of Mars Hill.
	Approximately 140 feet upstream of Mountain View Road.	None	+2,284	
Big Laurel Creek	Approximately 400 feet upstream of the confluence with French Broad River.	None	+1,393	Unincorporated Areas of Madison County.
	Approximately 1.7 miles upstream of Watershed Road (State Road 1505).	None	+4,301	
Big Pine Creek	Approximately 200 feet upstream of the confluence with French Broad River.	+1,525	+1,526	Unincorporated Areas of Madison County.
	At the confluence of North Fork Big Pine Creek and South Fork Big Pine Creek.	None	+2,481	
Brush Creek	Approximately 300 feet upstream of the confluence with French Broad River.	None	+1,514	Unincorporated Areas of Madison County.
	Approximately 150 feet upstream of Upper Brush Creek Road (State Road 1143).	None	+2,075	
Bull Creek	At the confluence with Ivy Creek	None	+1,817	Unincorporated Areas of Madison County.
	At the confluence of East Fork Bull Creek and West Fork Bull Creek.	None	+2,020	
California Creek	At the confluence with Little Ivy Creek and Paint Creek.	None	+2,099	Unincorporated Areas of Madison County.
	Approximately 600 feet upstream of the confluence of Holcombe Branch.	None	+2,665	
Crooked Creek	At the confluence with Middle Fork California Creek	None	+2,226	Unincorporated Areas of Madison County.
	Approximately 800 feet upstream of State Road 1526	None	+2,500	
Doggett Branch	At the confluence with Little Sandymush Creek	None	+2,291	Unincorporated Areas of Madison County.
	Approximately 700 feet upstream of NC Route 63	None	+2,392	
East Fork Bull Creek	At the confluence with Bull Creek and West Fork Bull Creek.	None	+2,020	Unincorporated Areas of Madison County.
	Approximately 1,300 feet upstream of East Fork Road (State Road 1364).	None	+2,073	
Fall Branch	At the confluence with Little Sandymush Creek	None	+2,248	Unincorporated Areas of Madison County.
	Approximately 700 feet upstream of the confluence with Little Sandymush Creek.	None	+2,281	
Friezeland Creek	At the confluence with Spring Creek	None	+2,426	Unincorporated Areas of Madison County.
	Approximately 1.2 miles upstream of the confluence with Spring Creek.	None	+2,608	
Frisby Branch	Approximately 250 feet upstream of the confluence with French Broad River.	None	+1,646	Town of Marshall.
	Approximately 1.2 miles upstream of the confluence with French Broad River.	None	+1,973	
Gabriel Creek	At the confluence with Ivy Creek	None	+1,899	Unincorporated Areas of Madison County, Town of Mars Hill.
	Approximately 0.8 mile upstream of Bruce Road	None	+2,879	
Tributary 2	At the confluence with Gabriel Creek	None	+2,041	Unincorporated Areas of Madison County, Town of Mars Hill.
	Approximately 300 feet upstream of Woodhaven Road.	None	+2,192	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Gilbert Branch	At the confluence with Little Sandymush Creek	None	+2,282	Unincorporated Areas of Madison County.
	Approximately 1,200 feet upstream of the confluence with Little Sandymush Creek.	None	+2,315	
Holcombe Branch	At the confluence with California Creek	None	+2,633	Unincorporated Areas of Madison County.
	Approximately 0.6 mile upstream of the confluence with California Creek.	None	+2,804	
Holland Creek	At the confluence with Ivy Gap Branch and Middle Fork California Creek.	None	+2,395	Unincorporated Areas of Madison County.
	Approximately 325 feet upstream of the confluence with Ivy Gap Branch and Middle Fork California Creek.	None	+2,412	
Ivy Creek	Approximately 400 feet upstream of the French Broad River.	None	+1,681	Unincorporated Areas of Madison County.
	Approximately 250 feet upstream of the confluence of Little Ivy Creek.	None	+1,971	
Ivy Gap Branch	At the confluence with Holland Creek and Middle Fork California Creek.	None	+2,395	Unincorporated Areas of Madison County .
	Approximately 270 feet upstream of the confluence with Holland Creek and Middle Fork California Creek.	None	+2,405	
Laurel Branch	At the confluence with Bull Creek	None	+1,844	Unincorporated Areas of Madison County.
	Approximately 350 feet upstream of Bend of Ivy Road (State Road 1576).	None	+1,877	
Little Ivy Creek	At the confluence with Ivy Creek	None	+1,970	Unincorporated Areas of Madison County.
	At the confluence of Paint Fork and California Creek	None	+2,099	
Little Laurel Creek	At the confluence with Shelton Laurel Creek	None	+1,688	Unincorporated Areas of Madison County.
	Approximately 250 feet upstream of the confluence of Shelton Branch.	None	+1,805	
Little Sandymush Creek	At the confluence with Sandymush Creek	None	+2,038	Unincorporated Areas of Madison County.
	Approximately 0.4 mile upstream of the confluence of Doggett Branch.	None	+2,355	
Meadow Fork of Spring Creek.	At the confluence with Spring Creek	None	+1,855	Unincorporated Areas of Madison County.
	Approximately 0.4 mile upstream of Keenerville Church Road.	None	+3,189	
Middle Fork California Creek	At the confluence with California Creek	None	+2,106	Unincorporated Areas of Madison County.
	Approximately 50 feet downstream of the confluence of Ivy Gap Branch and Holland Creek.	None	+2,394	
Morrow Branch	At the confluence with Little Sandymush Creek	None	+2,127	Unincorporated Areas of Madison County.
	Approximately 700 feet upstream of Austin Branch Road (State Road 1102).	None	+2,164	
North Fork Big Pine Creek	At the confluence with South Fork Big Pine Creek and Big Pine Creek.	None	+2,481	Unincorporated Areas of Madison County.
	Approximately 900 feet upstream of North Fork Road (State Road 1159).	None	+2,519	
Nowhere Branch	At the confluence with Bull Creek	None	+1,866	Unincorporated Areas of Madison County.
	Approximately 700 feet upstream of the confluence of Bull Creek.	None	+1,897	
Paint Fork	At the confluence with California Creek and Little Ivy Creek.	None	+2,099	Unincorporated Areas of Madison County.
	Approximately 900 feet upstream of the confluence of Ray Branch.	None	+2,403	
Polly Branch	At the confluence with Middle Fork California Creek	None	+2,323	Unincorporated Areas of Madison County.
	Approximately 700 feet upstream of the confluence with Middle Fork California Creek.	None	+2,335	
Ponder Creek	At the confluence with Middle Fork California Creek	None	+2,381	Unincorporated Areas of Madison County.
	Approximately 900 feet upstream of the confluence with Middle Fork California Creek.	None	+2,399	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Puncheon Fork	At the confluence with Big Laurel Creek	None	+2,996	Unincorporated Areas of Madison County.
	Approximately 1,300 feet upstream of Streets Gap Road (State Road 1502).	None	+4,052	
Ray Branch	At the confluence with Paint Fork	None	+2,377	Unincorporated Areas of Madison County.
	Approximately 1,200 feet upstream of the confluence with Paint Fork.	None	+2,402	
Sandymush Creek	Approximately 500 feet upstream of the confluence with French Broad River.	None	+1,728	Unincorporated Areas of Madison County.
	Approximately 100 feet upstream of the confluence with Little Sandymush Creek.	None	+2,041	
Shake Rag Branch	At the confluence with Middle Fork California Creek	None	+2,267	Unincorporated Areas of Madison County.
	Approximately 600 feet upstream of the confluence with Middle Fork California Creek.	None	+2,285	
Shelton Branch	At the confluence with Little Laurel Creek	None	+1,804	Unincorporated Areas of Madison County.
	Approximately 0.7 mile upstream of the confluence with Little Laurel Creek.	None	+1,910	
Shelton Laurel Creek	At the confluence with Big Laurel Creek	None	+1,629	Unincorporated Areas of Madison County.
	At the confluence of Whiteoak Flats Branch	None	+2,339	
South Fork Big Pine Creek	At the confluence with North Fork Big Pine Creek and Big Pine Creek.	None	+2,481	Unincorporated Areas of Madison County.
	Approximately 1,400 feet upstream of the confluence with North Fork Big Pine Creek and Big Pine Creek.	None	+2,513	
Spring Creek	Approximately 1,500 feet upstream of the confluence with French Broad River.	+1,326	+1,325	Unincorporated Areas of Madison County, Town of Hot Springs.
	At the confluence of Bear Branch	None	+2,825	
Sprinkle Creek	At the confluence with California Creek	None	+2,353	Unincorporated Areas of Madison County.
	Approximately 1.0 mile upstream of Sprinkle Creek Road (State Road 1349).	None	+3,347	
Terry Fork	At the confluence with Paint Fork	None	+2,195	Unincorporated Areas of Madison County.
	Approximately 2,000 feet upstream of Paint Fork	None	+2,220	
Tilden Metcalf Creek	At the confluence with Paint Fork	None	+2,261	Unincorporated Areas of Madison County.
	Approximately 100 feet upstream of Metcalf Creek Loop Road (State Road 1531).	None	+2,510	
West Fork Bull Creek	At the confluence with Bull Creek and East Bull Creek	None	+2,020	Unincorporated Areas of Madison County.
	Approximately 350 feet downstream of the confluence of Cargle Branch.	None	+2,194	
Whiteoak Creek	At the confluence with Ivy Creek	None	+1,852	Unincorporated Areas of Madison County.
	Approximately 0.6 mile upstream of Thomas Road (State Road 1567).	None	+2,182	
Tributary 2	At the confluence with Whiteoak Creek	None	+2,026	Unincorporated Areas of Madison County.
	Approximately 1,100 feet upstream of the confluence with Whiteoak Creek.	None	+2,043	
Tributary 4	At the confluence with Whiteoak Creek	None	+2,096	Unincorporated Areas of Madison County.
	Approximately 1,300 feet upstream of the confluence with Whiteoak Creek.	None	+2,120	
Wille Metcalf Creek	At the confluence with Paint Fork	None	+2,243	Unincorporated Areas of Madison County.
	Approximately 1,100 feet upstream of Metcalf Creek Loop (State Road 1531).	None	+2,366	

* National Geodetic Vertical Datum.
\# Depth in feet above ground.
\+ North American Vertical Datum.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

ADDRESSES

Town of Hot Springs
Maps are available for inspection at Hot Springs Town Hall, 168 Bridge Street, Hot Springs, NC.

Town of Mars Hill
Maps are available for inspection at Mars Hill Town Hall, 28 North Main Street, Mars Hill, NC.

Town of Marshall
Maps are available for inspection at Marshall Town Hall, 45 North Main Street, Marshall, NC.

Unincorporated Areas of Madison County
Maps are available for inspection at Madison County Planning and Zoning Office, 5707 U.S. Highway 25/70, Marshall, NC.

Transylvania County, North Carolina, and Incorporated Areas

Flooding source(s)	Location of referenced elevation	Effective	Modified	Communities affected
Boylston Creek	Approximately 1,500 feet downstream of the Henderson/Transylvania County boundary.	None	+2,173	Unincorporated Areas of Transylvania County.
	Approximately 50 feet upstream of King Road (State Road 1502).	None	+2,228	
Carson Creek	At the confluence with French Broad River	+2,136	+2,137	Unincorporated Areas of Transylvania County.
	Approximately 0.6 mile upstream of Island Ford Road (State Road 1103).	None	+2,471	
Catheys Creek	Approximately 10 feet upstream of U.S. Highway 64	+2,182	+2,187	Unincorporated Areas of Transylvania County, City of Brevard.
	Approximately 1.1 miles upstream of U.S. Highway 64	None	+2,253	
Davidson River	Approximately 100 feet upstream of Old Henderson Highway.	+2,103	+2,104	Unincorporated Areas of Transylvania County, City of Brevard.
	Approximately 50 feet upstream of U.S. 64 Highway	+2,127	+2,128	
Davidson River (original channel).	The confluence with Davidson River	+2,113	+2,117	Unincorporated Areas of Transylvania County, City of Brevard.
	Approximately 1,000 feet upstream from the confluence of Turkey Creek.	+2,123	+2,127	
Flat Creek	Approximately 100 feet upstream of the confluence with West French Broad River.	None	+2,298	Unincorporated Areas of Transylvania County.
	The confluence of North and South Flat Creek	None	+2,533	
Frozen Creek	At the confluence with West Fork French Broad River	+2,234	+2,233	Unincorporated Areas of Transylvania County.
	Approximately 500 feet upstream of Frozen Creek Road (State Road 1143).	None	+2,361	
Graham Creek	Approximately 600 feet upstream of Keystone Camp Road.	None	+2,167	Unincorporated Areas of Transylvania County, City of Brevard.
	Approximately 100 feet downstream of East Southwood Drive.	None	+2,172	
Hunts Branch	At the confluence with Norton Creek	+2,182	+2,180	Unincorporated Areas of Transylvania County, City of Brevard.
	Approximately 640 feet upstream of Probart Street (State Road 1348).	None	+2,218	
Indian Creek	The confluence with Toxaway River	None	+2,186	Unincorporated Areas of Transylvania County.
	Approximately 0.6 mile upstream of NC Highway 281	None	+3,041	
Jumping Branch	Approximately 10 feet upstream of Turnpike Road	None	+2,141	City of Brevard.
	Approximately 30 feet downstream of Miner Street	None	+2,163	
King Creek	Approximately 0.6 mile upstream of the confluence with French Broad River.	+2,106	+2,105	Unincorporated Areas of Transylvania County, City of Brevard.
	Approximately 0.4 mile upstream of Millbrook Drive	None	+2,290	
Little River	Approximately 1.3 miles upstream of Cascade Lake Road (State Road 1536).	None	+2,142	Unincorporated Areas of Transylvania County.
	Approximately 300 feet upstream of Casey Lane	None	+2,745	
Long Branch	The confluence with King Creek	+2,139	+2,144	Unincorporated Areas of Transylvania County, City of Brevard.
	Approximately 280 feet upstream of the confluence with King Creek.	+2,143	+2,144	
Lyday Creek	The confluence with French Broad River	+2,093	+2,097	Unincorporated Areas of Transylvania County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.7 mile upstream of the confluence of Blythe Branch.	None	+2,152	
Morton Creek	At the confluence with South Fork Flat Creek	None	+2,674	Unincorporated Areas of Transylvania County.
	Approximately 1,820 feet upstream of U.S. 64 Highway.	None	+2,700	
North Fork Flat Creek	At the confluence with Flat Creek and South Fork Flat Creek.	None	+2,533	Unincorporated Areas of Transylvania County.
	Approximately 1,300 feet upstream of Golden Road (State Road 1313).	None	+2,998	
Norton Creek	At the confluence with Nicholson Creek	+2,127	+2,128	Unincorporated Areas of Transylvania County, City of Brevard.
	Approximately 700 feet upstream of Probart Street (State Road 1348).	+2,212	+2,218	
Osborne Branch	The confluence with Boylston Creek	None	+2,223	Unincorporated Areas of Transylvania County.
	Approximately 0.7 mile upstream of the confluence with Boylston Creek.	None	+2,422	
Pole Bridge Branch	The confluence with Little River	None	+2,698	Unincorporated Areas of Transylvania County.
	Approximately 900 feet upstream of the confluence with Little River.	None	+2,739	
South Fork Flat Creek	At the confluence with Flat Creek and North Fork Flat Creek.	None	+2,533	Unincorporated Areas of Transylvania County.
	Approximately 0.5 mile upstream of Flat Creek Valley Road (State Road 1147).	None	+2,792	
South Prong Turkey Creek	At the confluence with Turkey Creek	None	+2,252	Unincorporated Areas of Transylvania County.
	Approximately 360 feet upstream of the confluence with Turkey Creek.	None	+2,269	
Sutton Creek	The confluence with Boylston Creek	None	+2,228	Unincorporated Areas of Transylvania County.
	Approximately 0.8 mile upstream of Lakeland Drive	None	+2,498	
Toxaway River	Approximately 5.9 miles upstream of North Carolina/South Carolina boundary.	None	+2,164	Unincorporated Areas of Transylvania County.
	Approximately 1.0 mile upstream of Cardinal Drive West.	None	+3,390	
Tributary 5	The confluence with Toxaway River	None	+2,654	Unincorporated Areas of Transylvania County.
	Approximately 0.4 mile upstream of the confluence with Toxaway River.	None	+3,021	
Tributary 6	The confluence with Toxaway River	None	+2,643	Unincorporated Areas of Transylvania County.
	Approximately 0.5 mile upstream of the confluence with Toxaway River.	None	+2,804	
Turkey Creek	At the confluence with Davidson River (original channel).	+2,120	+2,124	Unincorporated Areas of Transylvania County, City of Brevard.
	Approximately 120 feet upstream of the confluence with South Prong Turkey Creek.	None	+2,256	
West Fork French Broad River.	Approximately 1,600 feet upstream of U.S. Highway 64.	None	+2,247	Unincorporated Areas of Transylvania County.
	Approximately 200 feet upstream of the confluence of Flat Creek.	None	+2,307	
Whitewater River	At the North Carolina/South Carolina boundary	None	+1,961	Unincorporated Areas of Transylvania County.
	At the Transylvania/Jackson County boundary	None	+3,163	
Williamson Creek	Approximately 1,000 feet upstream of Wilson Road (State Road 1540).	+2,104	+2,105	Unincorporated Areas of Transylvania County.
	Approximately 1,000 feet upstream of the confluence of Camp Creek.	None	+2,116	
Wilson Mill Creek	Approximately 1,900 feet upstream of the confluence with Catheys Creek.	+2,147	+2,148	Unincorporated Areas of Transylvania County.
	Approximately 1,900 feet upstream of Forest Road	None	+2,398	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Send comments to William R. Blanton, Jr., Chief, Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Brevard

Maps are available for inspection at City of Brevard Planning Department, 95 West Main Street, Brevard, NC.

Unincorporated Areas of Transylvania County

Maps are available for inspection at Transylvania County Inspections Department, 98 East Morgan Street, Brevard, NC.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 15, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–21539 Filed 10–31–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7742 & FEMA–D–7828]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 30, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7742, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001, *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Riverside County, California and Incorporated Areas				
Colorado River	At the downstream corporate limits of Riverside County.	None	+244	Colorado River Indian Tribe, Unincorporated Areas of Riverside County.
	At the upstream corporate limits of Riverside County	None	+338	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Colorado River Indian Tribe
Maps are available for inspection at the Colorado River Indian Tribal Offices, 26600 Mohave Road, Parker, Arizona.

Unincorporated Areas of Riverside County
Maps are available for inspection at the Riverside County Flood Control District Office, 1995 Market Street, Riverside, California.

San Bernardino County, California and Incorporated Areas				
Colorado River	At the downstream corporate limits of San Bernardino County.	None	+338	City of Needles, Colorado River Indian Tribe, Fort Mojave Indian Tribe, Unincorporated Areas of San Bernardino.
	At the upstream corporate limits of San Bernardino County.	None	+485	
Hooke Creek	At confluence with Fern Canyon	None	+4,877	Unincorporated Areas of San Bernardino County.
	Approximately 500 feet upstream of Hooke Road	None	+5,238	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

City of Needles
Maps are available for inspection at the Needles City Hall, 817 Third Street, Needles, California.

Colorado River Indian Tribe
Maps are available for inspection at the Colorado River Indian Tribal Offices, 26600 Mohave Road, Parker, Arizona.

Fort Mojave Indian Tribe
Maps are available for inspection at the Mohave Indian Tribal Offices, 500 Merriman Avenue, Needles, California.

Unincorporated Areas of San Bernardino County
Maps are available for inspection at the San Bernardino County Public Works Department, 825 East Third Street, San Bernardino, California.

Monroe County, New York, and Incorporated Areas				
East Branch	At Northbridge Road	+379	+380	Town of Greece.
Larkin Creek	Approximately 1,440 feet upstream of St. Andrews Dam.	None	+456	
East Branch Red Creek	At confluence with Middle Branch Red Creek	+525	+523	Town of Henrietta.
	Approximately 2,400 feet upstream of Erie Station Road.	+570	+572	
East Branch Round Pond Creek.	At Ridgeway Road	+474	+472	Town of Greece.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 2,900 feet upstream of Long Pond Road.	+511	+515	
East Branch Shipbuilders Creek.	At Railroad	+321	+328	Town of Webster.
	Approximately 1,800 feet upstream of Dirt Track	+426	+430	
East Branch Tributary Red Creek.	At confluence with East Branch Red Creek	+529	+530	Town of Henrietta.
	Approximately 150 feet upstream of East Henrietta Road.	+575	+574	
East Stem Middle Branch Red Creek.	At confluence with Middle Branch Red Creek and West Stem Middle Branch Red Creek.	+525	+524	Town of Henrietta.
	Approximately 150 feet upstream of Erie Station Road	+579	+578	
Irondequoit Creek Reach 1	Approximately 387 feet downstream of Linden Avenue.	None	+357	Village of East Rochester, Town of Perinton.
	Approximately 1,600 feet upstream of Ontario Street	None	+380	
Larkin Creek	At approximately 20 feet upstream of Lake Ontario State Parkway.	+253	+255	Town of Greece, Town of Ogden.
	Approximately 430 feet upstream of Black Forest Drive in Town of Ogden.	None	+464	
Middle Branch Red Creek	At confluence with Red Creek and East Branch Red Creek.	+525	+523	Town of Henrietta.
	At confluence with East and West Stem Middle Branch Red Creek.	+525	+524	
Northrup Creek	At Flynn Road	+250	+249	Town of Greece, Town of Ogden, Town of Parma, Village of Spencerport.
	Approximately 612 feet upstream of Wood Duck Run	None	+593	
Red Creek	At confluence with Erie Canal	+517	+514	Town of Henrietta, City of Rochester, Town of Brighton.
	At confluence with Middle and East Branch Red Creek.	+525	+523	
Round Pond Creek Reach 1	At Island Cottage Road	+256	+257	Town of Greece.
	Approximately 4,400 feet downstream of Flood Control Dam.	+459	+461	
South Stem East Branch Tributary Red Creek.	At confluence with East Branch Tributary Red Creek	+554	+553	Town of Henrietta.
	Approximately 42 feet upstream of East Henrietta Road.	+575	+582	
West Branch Red Creek	At confluence with Red Creek	+520	+518	City of Rochester, Town of Brighton.
	At Bridge to Park Dump	+520	+519	
West Stem Middle Branch Red Creek.	At confluence with Middle Branch Red Creek and East Stem Middle Branch Red Creek.	+525	+524	Town of Henrietta.
	Approximately 270 feet upstream of Erie Station Road	+560	+563	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Rochester
Maps are available for inspection at Rochester City Hall, 30 Church Street, Rochester, NY.

Town of Brighton
Maps are available for inspection at Brighton Town Hall, 2300 Elmwood Avenue, Rochester, NY.

Town of Greece
Maps are available for inspection at Greece Town Hall, 1 Vince Tofany Boulevard, Greece, NY.

Town of Henrietta
Maps are available for inspection at Henrietta Town Hall, 475 Calkins Road, Henrietta, NY.

Town of Ogden
Maps are available for inspection at Ogden Town Hall, 269 Ogden Center Road, Spencerport, NY.

Town of Parma
Maps are available for inspection at Parma Town Hall, 1300 Hilton-Parma Corners Road, Hilton, NY.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Town of Perinton

Maps are available for inspection at Perinton Town Hall, 1350 Turk Hill Road, Fairport, NY.

Town of Webster

Maps are available for inspection at Webster Town Hall, 1000 Ridge Road, Webster, NY.

Village of East Rochester

Maps are available for inspection at East Rochester Village Hall, 120 West Commercial Street, East Rochester, NY.

Village of Spencerport

Maps are available for inspection at Spencerport Village Building Department, 269 Ogden Center Road, Spencerport, NY.

Carroll County, Virginia, and Incorporated Areas

Chestnut Creek	Approximately 2450 feet downstream of Cliffview Road.	None	+2298	Unincorporated Areas of Carroll County.
	Approximately 7500 feet upstream of Cliffview Road	None	+2332	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Carroll County

Maps are available for inspection at Building Officials Office, 605–1 Pine Street, Hillsville, VA 24343.

Grayson County, Virginia, and Incorporated Areas

Chestnut Creek	Near Sewage Treatment Plant, just upstream of County Boundary.	None	+2332	Unincorporated Areas of Grayson County.
	Near Sewage Treatment Plant, approximately 375 feet downstream of old Railroad Bridge.	None	+2335	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Grayson County

Maps are available for inspection at County Administrators Office, 129 Davis Street, Independence, VA 24348.

None County, Virginia, and Incorporated Areas

Chestnut Creek	Just upstream of Cliffview Road	None	+2308	City of Galax.
	Approximately 7500 feet upstream of Cliffview Road	None	+2332	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Galax

Maps are available for inspection at Galax Municipal Building, 111 East Grayson Street, Galax, VA 24333.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 24, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–21540 Filed 10–31–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 12, 14, 15, 16, 19, 27, 30, 31, 32, 42, 44, 49, and 52

[FAR Case 2005–036; Docket 2007–001, Sequence 7]

RIN 9000–AK74

Federal Acquisition Regulation; FAR Case 2005–036, Definition of Cost or Pricing Data

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting; extension of comment period.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are cosponsoring a public meeting to discuss the proposed Federal Acquisition Regulation (FAR) rule 2005–036 on cost or pricing data. The rule would revise the definition of ''cost or pricing data''; change the term ''information other than cost or pricing data'' to ''data other than certified cost or pricing data''; add a definition of ''certified cost or pricing data'' to make the terms and definitions consistent with 10 U.S.C. 2306(a) and 41 U.S.C. 254(b) and more understandable to the general reader; change terminology throughout the FAR; and clarify the need to obtain data other than certified cost or pricing data when there is no other means to determine fair and reasonable pricing during price analysis.

The proposed rule was published in the **Federal Register** at 72 FR 20092 on April 23, 2007. The Councils are now seeking additional views before finalizing the proposed rule.

A public meeting will be held on November 15, 2007, from 9:00 a.m. to 1:00 p.m. EST, in the General Services Administration Building Auditorium, 1800 F Street, NW, Washington, DC, 20405. Interested parties may register electronically at: *http://www.corpcomm-inc.com/dpap/dars/far__case__2005–036__meeting__registration.php*. Attendees are encouraged but not required to register for the public meeting, to ensure adequate room accommodations.

DATES: The comment period has been extended. Interested parties should submit written comments to the FAR Secretariat on or before November 22, 2007, to be considered in the formulation of the final rule. Please do not resubmit comments already made. If you wish your views at the public meeting to be considered as a public comment you must submit a public comment. Copies of the public comments already submitted are available at *http://www.regulations.gov*.

ADDRESSES: Submit comments identified by FAR Case 2005–036 by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*.

- To search for any document, first select under ''Step 1,'' ''Documents with an Open Comment Period'' and select under ''Optional Step 2,'' ''Federal Acquisition Regulation'' as the agency of choice. Under ''Optional Step 3,'' select ''Proposed Rules''. Under ''Optional Step 4,'' from the drop down list, select ''Document Title'' and type the FAR case number ''2005–036''. Click the ''Submit'' button. Please include your name and company name (if any) inside the document.

You may also search for any document by clicking onthe ''Search for Documents'' tab at the top of the screen. Select from the agency field ''Federal Acquisition Regulation'', and type ''2005–036'' in the ''Document Title'' field. Select the ''Submit'' button.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2005–036 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT Edward N. Chambers, Deputy Chair, FAR Finance Team, by telephone at (202) 501–3221, or by e-mail at edward.chambers@gsa.gov, for clarification of content. Please cite FAR Case 2005–036. For information pertaining to status or publication schedules, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755.

Dated: October 24, 2007.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. 07–5404 Filed 10–31–07; 8:45 am]

BILLING CODE 6820–EP–S

Notices

Federal Register
Vol. 72, No. 211
Thursday, November 1, 2007

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

October 29, 2007.

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) 720–8958.

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.

Animal and Plant Health Inspection Service

Title: Brucellosis in Sheep, Goats, Horses, and Payment of Indemnity.

OMB Control Number: 0579–0185.

Summary of Collection: Title 7, U.S.C. 8301, the Animal Health Protection Act, authorizes the Secretary of Agriculture to take such measures as he deems proper to prevent the introduction or dissemination of any contagious or communicable disease of animals or live poultry from a foreign country into the United States or from one State to another. The agency charged with carrying out this disease prevention mission is the Animal and Plant Health Inspection Service (APHIS). Disease prevention is the most effective method for maintaining a healthy animal population and enhancing APHIS' ability to compete in the world market of animal and animal product trade. Brucellosis is a contagious disease that causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. It is mainly a disease of cattle, bison, and swine. Sheep, goats, and horses are also susceptible, but are rarely infected. There is no economically feasible treatment for brucellosis in livestock. APHIS will collect information using APHIS forms VS 1–23, Indemnity Claim, VS 4–33, Test Records, and VS 1–27, Permit for Movement of Restricted Animals.

Need and Use of the Information: APHIS will collect information from the use of official seals and animal identification; indemnity claims, test records, and permits; and the submission of proof of destruction documentation and requests for extension of certain program-related deadlines. The information will provide indemnity to owners of sheep, goats, or horses destroyed because of brucellosis.

Without the information, it would make it impossible for APHIS to effectively operate an indemnity program for sheet, goats, and horses destroyed because of brucellosis.

Description of Respondents: Business or other for-profit; State, Local and Tribal Government.

Number of Respondents: 3.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. E7–21516 Filed 10–31–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–TM–07–0121; TM–07–10]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of the currently approved information collection for OMB 0581–0229 ''Form TM–28, USDA Farmers Market Application.'' Copies of this one-time yearly application form to participate in the U.S. Department of Agriculture (USDA) Farmers Market at 12th Street & Independence Avenue, SW., Washington, DC, may be obtained by calling the AMS Marketing Services Branch contact listed.

DATES: Comments received by December 31, 2007 will be considered.

Additional Information Information or Comments: Contact Errol R. Bragg, Associate Deputy Administrator, Marketing Services Branch, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), USDA, Room 2646–South, 1400 Independence Avenue, SW., Washington, DC 20250; 202/720–8317, or fax 202/690–0031.

Comments should reference docket number AMS–TM–07–0121, TM–07–10 and be sent to Mr. Errol Bragg at the above address or via the Internet at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: USDA Farmers Market Application.

OMB Number: 0581–0229.

Expiration Date of Approval: March 31, 2008.

Type of Request: Extension of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the Secretary of Agriculture to conduct, assist, and foster research, investigation, and experimentation to determine the best methods of processing, preparation for market packaging, handling, transporting, distributing, and marketing agricultural products, 7 U.S.C. 1622(a). Moreover, 7 U.S.C. 1622(f) directs and authorizes the Secretary to conduct and cooperate in consumer education for more effective utilization and greater consumption of agricultural products. In addition, 7 U.S.C. 1622(n) authorizes the Secretary to conduct services and to perform activities that will facilitate the marketing and utilization of agricultural products through commercial channels.

On December 23, 2005, the AMS published a final rule in the **Federal Register** (70 FR 76129) to implement established regulations and procedures under 7 CFR Part 170 for AMS to operate the USDA Farmers Market, specify vendor criteria and selection procedures, and define guidelines to be used for governing the USDA Farmers Market annually on 12th Street and Independence Ave., SW., Washington, DC. A one-time yearly submission information collection in a required application form was also established.

The information collection in *Form TM–28, USDA Farmers Market Application* is required by farms or businesses participating at the USDA Farmers Market. The information allows AMS the means of reviewing the type of products available for sale and selecting participants for the annual market season. The type of information within the application includes: (1) Certification the applicant is the owner or representative of the farm or business; (2) applicant contact information including name(s), address, phone number, and email address; (3) farm or business location; (4) types of products grown; (5) business practices; and (6) insurance coverage.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.08 hours per response.

Respondents: Farmers and/or vendors completing the application to participate in the USDA Farmers Market.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.66 hours.

Comments are invited on: (1) 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) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Errol R. Bragg at the address listed under section ''*Additional Information or Comments*'' or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503. Comments must be received by December 31, 2007. All comments received by AMS will be available for public inspection during regular business hours, 8 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, at the same address; and can be viewed via the Internet at *http://www.regulations.gov*.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: October 29, 2007.

Lloyd Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–5439 Filed 10–29–07; 2:40 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection: Measurement Service Requests

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of re-opening of a public comment period.

SUMMARY: The Farm Service Agency (FSA) is reopening and extending the comment period for 30 days to allow any interested individuals and organizations to provide their comments on the amended estimated total annual burden for the new information collection associated with the Measurement Service Requests. The amended estimate adds the respondent's travel time for the information collection associated with the Measurement Service Requests, which was inadvertently left out of the previous burden estimate. FSA published the original notice and request for comments in the **Federal Register** on Friday, May 11, 2007 (72 FR 26774). FSA will accept all public comments received from May 11 to the closing date identified in this notice.

DATES: Comments on this notice must be received by December 3, 2007.

ADDRESSES: We invite you to submit comments on this notice. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

E-Mail: Send comments to: Maryann.ball@wdc.usda.gov.

Fax: (202) 720–5233.

Mail: Farm Service Agency, USDA, Attn: Mary Ann Ball, Regulatory Review Group, USDA, FSA, STOP 0572, 1400 Independence Avenue, SW., Washington, DC, 20250–0572.

Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Ann Ball, Regulatory Review Group, (202) 720–4283.

SUPPLEMENTARY INFORMATION:

The information collection is described in the notice published on May 11, 2007 (72 FR 26774). (See that notice for information in the following categories: OMB control number, type of request, and abstract.) The following information is provided to amend the estimated total annual burden and to include travel time in the estimated total annual burden and to correct the calculation of the estimated total annual burden on respondents.

Title: Management Service Requests (FSA–409).

Estimate of Annual Burden: Public reporting burden for this collection of information is estimated to average .25 hours (15 minutes) per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Respondents: Producers.

Estimated Number of Respondents: 135,000.

Estimated Annual Number of Respondents: 135,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 168,750.

Comments are invited on:

(1) Whether this collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of the 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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public records. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on October 26, 2007.

John A. Johnson,

Acting Administrator, Farm Service Agency.

[FR Doc. E7–21478 Filed 10–31–07; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Prince William Sound User Experience Survey

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection: Prince William Sound User Experience Survey.

DATES: Comments must be received in writing on or before December 31, 2007 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Sara Boario or Aaron Poe, Glacier Ranger District, Chugach National Forest, Forest Service, USDA, P.O. Box 129 Forest Station Road, Girdwood, AK 99587

Comments also may be submitted via facsimile to (907) 783–2094 or by e-mail to: *sboario@fs.fed.us* and *apoe@fs.fed.us.*

The public may inspect comments received at Glacier Ranger District, 145 Forest Station Road, Girdwood, Alaska, during normal business hours; 0800–1700 Monday through Friday. Visitors are encouraged to call ahead to (907) 783–3242 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Sara Boario and Aaron Poe at (907) 783–3242. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Prince William Sound User Experience Survey.

OMB Number: 0596–New.

Type of Request: New.

Abstract: In 1989, Prince William Sound (PWS), the heart of the Chugach National Forest (CNF), was severely impacted by the Exxon Valdez Oil Spill (EVOS). In the aftermath of the spill, federal and state trustees were awarded criminal and civil restitution funds to help with the recovery (and the evaluation of the recovery) of injured resources and human services, including the recreation/tourism service (still listed as ''recovering''). For the current list of injured resources and human services, please visit the Exxon Valdez Oil Spill Trustee Council: *http://www.evostc.state.ak.us/Publications/injuredresources.cfm.*

The CNF, as the major land-owning federal trustee in PWS, is required and committed to playing an important role in the recovery process. One area that has received less attention by researchers in the past, and is of critical importance to the CNF managers today, is the distribution, behavior and experience of human users throughout the PWS and its impact on EVOS injured resources and human services. Human use in the PWS is increasing, and there is growing concern that increased competition and rapid growth in commercial and independent human use may be threatening EVOS injured resources and human services.

The Prince William Sound User Experience Survey, along with an associated recreation behavior simulation (funded by EVOS federal criminal restitution dollars) will add critical depth to the few existing PWS human use studies by describing the exact nature of user-resource experiences in the PWS, and evaluating the potential for conflict among user groups and displacement due to lingering oil.

Both user experience and conflicts between user groups have significant implications for injured resources and human services recovery. This information is required to make predictions about changing dynamics of human use distribution and intensity. Such predictive power is needed to gain an understanding of the spatial and temporal patterns of recreation/tourism human use relative to EVOS impacted resources and services. The results will inform recovery and restoration activities which have been undertaken by both the EVOS trustees and local resource managers relative to current and projected levels of human use. It also provides an excellent opportunity to assess the recovery of the recreation/tourism human service, injured and redistributed by the EVOS and still listed as ''recovering'' by the Trustee Council, and whether or how CNF managers can further enhance its recovery.

PWS recreation users will be contacted at harbors in three communities: Whittier, Cordova, and Valdez prior to embarking on their trips. They will be asked to complete a questionnaire during their trip and return it in a self-addressed and stamped envelope. The information will be collected by Forest Service employees and contractors for the University of Arizona.

Data collection efforts will consist of a mapped description (trip diary) of the trip completed; the numbers and types of encounters respondents had with other users during the trip; and user perceptions about experiences relative to expectations prior to the trip. Additionally, limited categorical information will be collected about the mode of transportation and preferred recreation activity in the PWS.

This information will be used to characterize recreation users to the area, as well as experiences of individuals regarding encounters with other human uses. The data will be used by managers to determine use patterns for the PWS, giving decision makers insight into the recovery of injured resources and human services, which were redistributed around the PWS in the aftermath of EVOS. This data will provide managers with the ability to protect and restore EVOS injured resources and human services during a time of increasing human use in the PWS.

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Individuals.

Estimated Annual Number of Respondents: 500.

Estimated Annual Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 167 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: October 25, 2007.

C.L. Newman, Jr.,

Acting Deputy Chief, NFS.

[FR Doc. E7–21515 Filed 10–31–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Proposed Fee Change; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: USDA Forest Service.

ACTION: Notice of proposed fee change.

SUMMARY: The Begich, Boggs Visitor Center, located within the Chugach National Forest in Alaska will change the fee it charges after consideration of public comments. New fees are to begin on Memorial Day Weekend 2008. The increased fee that it collects will help to make up the shortfall in operations and maintenance costs that it is experiencing due to declining Federal budgets and a change in fee authority. The expanded fee program will allow the visitor center to reopen its doors to the public on weekends from October through May, and to offer interpretive presentations to the public during the summer months, as well as upkeep the center and its exhibits and audio-visual programs and equipment. We are also planning to charge facility use fees, as outlined in our ''Amended Business and Communication Plan 2007,'' for special use of the visitor center. As a result we are also seeking input from the public on the fee structure for special facility use during the same comment period. The special facility use fees will be a part of the amended Recreation Fee structure for the Begich, Boggs Visitor Center and help us to meet our operation and maintenance needs. Currently the only fee charged at the center is a fee for the movie ''Voices From the Ice.'' The fee is currently $1 per person (age 16 and older). Starting on Memorial Day Weekend 2008, we propose to charge a higher fee to all visitors (age 16 and older). The expanded fee will allow these visitors to see the movie, visit the exhibits and participate in any of our interpretive walks and presentations offered. Those people who do not pay for this expanded standard amenity fee will be able to use the restrooms, shop in the Alaska Natural History Association bookstore or ask questions of our staff at the front desk.

DATES: Please submit comments on or before January 2, 2008.

ADDRESSES: Lezlie Murray, Glacier Ranger District, Chugach National Forest, P.O. Box 129, Girdwood, AK 99587.

FOR FURTHER INFORMATION CONTACT: Lezlie Murray, Visitor Center Director, Begich, Boggs Visitor Center, (907) 754–2316, *llmurray01@fs.fed.us. http://www.fs.fed.us/r10/chugach/chugach_pages/bbvc.html.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever a change in an established recreation fee is being considered. The Recreation Fee Program, authorized in Public Law 104–134, is designed to fund federal recreation facilities and services and visitor center facilities and services through user fees collected on the site. The Begich, Boggs Visitor Center has charged a fee for the movie through the Fee Demo Program beginning in 1999, and then through the Federal Recreation Lands Enhancement Act when the Fee Program was made permanent beginning in 2005.

Dated: October 26, 2007.

Joe L. Meade,

Forest Supervisor.

[FR Doc. 07–5431 Filed 10–31–07; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of briefing.

DATE AND TIME: Friday, November 9, 2007; 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

Briefing Agenda

Briefing on Minorities in Foster Care and Adoption

I. Introductory Remarks by Chairman
II. Speakers' Presentations
III. Questions by Commissioners and Staff Director
IV. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Sock Foon MacDougall, Press and Communications (202) 376–8582.

Dated: October 30, 2007.

David Blackwood,

General Counsel.

[FR Doc. 07–5458 Filed 10–30–07; 1:05 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp from the People's Republic of China: Rescission of the Second Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Michael Quigley, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–4047.

Background

On April 6, 2007, the Department of Commerce (''the Department'') published in the **Federal Register** a notice of initiation listing 105 firms for which it received timely requests for an administrative review of this antidumping duty order. *See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China*, 72 FR 17095 (April 6, 2007). The period of review (POR) is February 1, 2006, through January 31, 2007.

On July 5, 2007, the Louisiana Shrimp Association (''LSA'') withdrew its request for review of 95 companies. On August 22, 2007, the Department rescinded the review with respect to these companies in accordance with 19 CFR 351.213(d)(1). *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Partial Rescission of the 2006/2007 Antidumping Duty Administrative Review*, 72 FR 46955 (August 22, 2007). Accordingly, the following companies remain subject to this administrative review: Allied Pacific (H.K.) Co. Ltd. (''Allied H.K.''), Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. (''Allied Zhanjiang''), Allied Pacific Food (Dalian) Co., Ltd. (''Allied Dalian''), Asian Seafoods (Zhanjiang) Co., Ltd. (''Asian Seafoods''), Guolian Aquatic Products (''Guolian Aquatic''), Hai Li Aquatic Co., Ltd. Zhao An, Fujian (also known as Haili Aquatic Co., Ltd. Zhaoan Fujian) (''Hai Li''), King Royal Investment Ltd. (''King Royal''), Yelin Enterprise Co, Ltd. Hong Kong (''Yelin''), Zhanjiang Allied Pacific Aquaculture Co., Ltd. (''Zhanjiang Aquaculture''), and Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd. (''Zhanjiang Evergreen'').

Rescission of Review

On April 20, 2007, the Department received a certification of no shipments and request to rescind the review with respect to Yelin, from its successor–in-interest, Hilltop International. On April 23, 2007, the Department received certifications of no shipments and requests to rescind the review with respect to Hai Li and Asian Seafoods. Also on April 23, 2007, the Department received a certification of no shipments and request to rescind the review from the director of Allied H.K., on behalf of Allied H.K., Allied Zhanjiang, Allied Dalian, King Royal, and Zhanjiang Aquaculture (collectively, ''Allied Group''). For each company that reported no shipments, the Department conducted an internal U.S. Customs and Border Protection (''CBP'') data query, which demonstrated that the company had no entries. Therefore, pursuant to 19 C.F.R. 351.213(d)(3), the Department is rescinding its administrative review with respect to Yelin, Hai Li, Asian Seafoods and the Allied Group, since there were no POR entries of subject merchandise to review.

With respect to the administrative review of Guolian Aquatic, which was requested by the LSA, the LSA stated in its April 27, 2007, submission to the Department that this company is the same company as Zhanjiang Guolian Aquatic Products Co., Ltd. (''Zhanjiang Guolian''). Moreover, in its April 23, 2007, submission to the Department, Zhanjiang Guolian stated that Guolian Aquatic is the same company as Zhanjiang Guolian. Zhanjiang Guolian is excluded from the antidumping duty order on shrimp from the People's Republic of China (''PRC''). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005). Thus, as no interested party contests that Guolian Aquatic and Zhanjiang Guolian are the same entity, and Zhanjiang Guolian is excluded from the antidumping duty order, we are rescinding the administrative review of Guolian Aquatic.

With respect to Zhanjiang Evergreen, information contained in its August 17, 2007, submission to the Department demonstrates that it did not make any entries of subject merchandise into the United States during the POR. We note that: ''{i}t is the Department's consistent, long–standing practice, supported by substantial precedent, to require that there be entries during the POR upon which to assess antidumping duties, irrespective of the export–price or constructed export–price designation of the U.S. sales.'' *See Certain Corrosion–Resistant Carbon Steel Flat Products from France: Notice of Rescission of Antidumping Duty Administrative Review*, 71 FR 16553 (April 3, 2006). The Department conducted an internal CBP data query, which demonstrated that Zhanjiang Evergreen had no entries. Therefore, as Zhanjiang Evergreen reported that it did not have entries during the POR, in accordance with 19 C.F.R. 351.213(d)(3), the Department is rescinding its review of Zhanjiang Evergreen. As no other companies remain subject to the administrative review of certain frozen warmwater shrimp from the PRC for this POR, the review is rescinded in its entirety.

Assessment Rates

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For those companies for which this review has been rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(I). The Department will issue appropriate assessment instructions directly to CBP after 15 days of publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(I)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 26, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–21531 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of November 2007,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Period
Antidumping Duty Proceedings	
Argentina: Barbed Wire & Barbless Fencing Wire, A–357–405	11/1/06–10/31/07
Brazil: Circular Welded Non-Alloy Steel Pipe, A–351–809	11/1/06–10/31/07
Hungary: Sulfanilic Acid, A–437–804	11/1/06–10/31/07
Kazakhstan: Certain Hot-Rolled Carbon Steel Flat Products, A–834–806	11/1/06–10/31/07
Mexico: Circular Welded Non-Alloy Steel Pipe, A–201–805	11/1/06–10/31/07
Netherlands: Certain Hot-Rolled Carbon Steel Flat Products, A–421–807	11/1/06–11/28/06
Portugal: Sulfanilic Acid, A–471–806	11/1/06–10/31/07
Republic of Korea: Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/06–10/31/07
Romania: Certain Hot-Rolled Carbon Steel Flat Products, A–485–806	11/1/06–10/31/07
Taiwan:	
Certain Hot-Rolled Carbon Steel Flat Products, A–583–835	11/1/06–10/31/07
Circular Welded Non-Alloy Steel Pipe, A–583–814	11/1/06–10/31/07
Thailand: Certain Hot-Rolled Carbon Steel Flat Products, A–549–817	11/1/06–10/31/07
The People's Republic of China:	
Certain Cut-to-Length Carbon Steel, A–570–849	11/1/06–10/31/07
Certain Hot-Rolled Carbon Steel Flat Products, A–570–865	11/1/06–10/31/07
Fresh Garlic, A–570–831	11/1/06–10/31/07
Paper Clips, A–570–826	11/1/06–10/31/07
Pure Magnesium in Granular Form, A–570–864	11/1/06–10/31/07
Refined Brown Aluminum Oxide, A–570–882	11/1/06–10/31/07
Ukraine: Certain Hot-Rolled Carbon Steel Flat Products, A–823–811	11/1/06–10/31/07
Countervailing Duty Proccedings	
Hungary: Sulfanilic Acid, C–437–805	1/1/06–12/31/06
Suspension Agreements	
Ukraine: Certain Cut-to-Length Carbon Steel, A–823–808	11/1/06–10/31/07

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of

[1] Or the next business day, if the deadline falls on a weekend, Federal holiday or other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of November 2007. If the Department does not receive, by the last day of November 2007, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the U.S. Customs and Border Protection to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 25, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–21542 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for December 2007

The following Sunset Reviews are scheduled for initiation in December 2007 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

	Department contact
Antidumping Duty Proceedings	
Ferrovanadium from the People's Republic of China (A–570–873)	Juanita Chen, (202) 482–1904.
Ferrovanadium from South Africa (A–791–815)	Brandon Farlander, (202) 482–0182.
Countervailing Duty Proceedings	
No Sunset Review of countervailing duty proceedings are scheduled for initiation in December 2007	
Suspended Investigations	
No Sunset Review of suspended investigations are scheduled for initiation in December 2007	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 15 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: October 25, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–21535 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty order and suspended investigation listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

EFFECTIVE DATE: November 1, 2007.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review(s)* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998).

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty order and suspended investigation:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–570–847	731–TA–749	PRC	Persulfates (2nd Review).	Juanita Chen, (202) 482–1904.
Suspended Investigation				
A–201–820	731–TA–747	Mexico	Fresh Tomatoes.	Sally Gannon, (202) 482–0162.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's sunset Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these Sunset Reviews must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

For sunset reviews of countervailing duty orders, parties wishing the Department to consider arguments that countervailable subsidy programs have been terminated must include with their substantive responses information and documentation addressing whether the changes to the program were (1) limited to an individual firm or firms and (2) effected by an official act of the government. Further, a party claiming program termination is expected to document that there are no residual benefits under the program and that substitute programs have not been introduced. Cf. 19 CFR 351.526(b) and (d). If a party maintains that any of the subsidies countervailed by the Department were not conferred pursuant to a subsidy program, that party should nevertheless address the applicability of the factors set forth in 19 CFR 351.526(b) and (d). Similarly, parties wishing the Department to consider whether a company's change in ownership has extinguished the benefit from prior non-recurring, allocable, subsidies must include with their substantive responses information and documentation supporting their claim that all or almost all of the company's shares or assets were sold in an arm's length transaction, at a price representing fair market value, as described in the *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act,* 68 FR 37125 (June 23, 2003) (*''Modification Notice''*). *See Modification Notice* for a discussion of the types of information and documentation the Department requires.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: October 25, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–21552 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Final Results of Antidumping Duty Changed–Circumstances Review: Gray Portland Cement and Clinker From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 11, 2007, the Department of Commerce (the Department) published the preliminary results of the changed–circumstances review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers one manufacturer/exporter, Holcim Apasco, S.A. de C.V. (Apasco). The changed–circumstances review covers exports of subject merchandise to the United States during the period October 1, 2006, through December 31, 2006.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margin is provided in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3477 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2007, the Department published in the **Federal Register** the preliminary results of the changed–circumstances review of the antidumping duty order on gray portland cement and clinker from Mexico. See *Preliminary Results of Antidumping Duty Changed–Circumstances Review: Gray Portland Cement and Clinker From Mexico*, 72 FR 37711 (July 11, 2007) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results* and on our findings at verification. We received case briefs from Apasco and the Southern Tier Cement Committee (the petitioner) on September 7, 2007. We received rebuttal briefs from Apasco and the petitioner on September 14, 2007.

Scope of the Order

The products covered by this order include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item number 2523.29 and cement clinker is currently classifiable under HTSUS item number 2523.10. Gray portland cement has also been entered under HTSUS item number 2523.90 as ''other hydraulic cements.'' The HTSUS subheadings are provided for convenience and customs purposes only. The Department's written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this changed–circumstances review, and to which we have responded, are listed in the Appendix to this notice and addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary for Import Administration, dated October xx, 2007, which is hereby adopted by this notice. The Decision Memorandum is on file in Import Administration's Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum is available on the Internet at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in our to our calculations. In addition, we made corrections as a result of the verification of Apasco's information, which we conducted from July 23, through July 27, 2007. These changes are discussed in the Final Results Analysis Memorandum from the case analyst to the File dated October 25, 2007.

Final Results of Review

We determine that the weighted–average margin for merchandise produced and exported by Apasco for the changed–circumstances review covering the period October 1, 2006, through December 31, 2006 is 29.19 percent.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to CBP 41 days after the date of publication of these final results of this changed–circumstances review. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer–specific assessment rate for merchandise subject to this review. Because Apasco reported the entered value for its export–price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for the importer of record.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by the company included in the final results of review for which the reviewed company did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash–Deposit Requirements

As provided by section 751(a)(1) of the Act, the cash–deposit rate for all shipments from Apasco of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of changed–circumstances review will be the rate established in these final results of changed–circumstances review. The deposit requirements shall remain in effect until further notice.

Notification

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing these final results of changed–circumstances review and notice in accordance with section 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: October 25, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix–Issues in the Decision Memo

1. Difference–in-Merchandise Adjustment
2. Level of Trade
3. Bag vs. Bulk
4. Profit–Sharing/Cost Test

[FR Doc. E7–21541 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Partial Rescission of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1174 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2007, the Department issued a notice of opportunity to request an administrative review of this order for the period of review (''POR'') May 1, 2006, through April 30, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 23796 (May 1, 2007). On May 31, 2007, Huvis Corporation (''Huvis'') requested an administrative review of its entries that were subject to the antidumping duty order for this period. On that same date, the Department also received a request from Wellman, Inc., DAK Americas LLC, and Invista, S.a.r.L. (collectively, ''the petitioners'') for a review of Huvis, Saehan Industries, Inc. (''Saehan''), Mijung Industry Co., Ltd. (''Mijung''), Estal Industry Co., Ltd. (''Estal''), Keon Baek Co., Ltd. (''Keon Baek''), Sam Young Synthetics Co., Ltd. (''Sam Young''), Sunglim Co., Ltd. (''Sunglim''), and Daeyang Industrial Co., Ltd. (''Daeyang'').[1] On June 13, 2007, the petitioners withdrew their review request for Keon Baek because that company is no longer subject to the order. On June 20, 2007, the petitioners withdrew their review requests for Mijung, Sam Young, and Sunglim. On June 29, 2007, the Department published the notice of initiation of this antidumping duty administrative review, covering Huvis, Saehan, Estal, Daeyang, and Samyang Corporation (''Samyang''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 72 FR 35690 (June 29, 2007). On July 26, 2007, the petitioners withdrew their request for review of Saehan. On September 21, 2007, the petitioners withdrew their request for reviews of Estal and Daeyang.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because the petitioners withdrew their request for review of Saehan, Estal, and Daeyang within the 90-day period and no other party requested a review of Saehan's, Estal's, or Daeyang's entries, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to Saehan, Estal, and Daeyang.

With respect to Samyang, pursuant to 19 CFR 351.213(b)(1), the Department conducts an administrative review based on a request from a domestic interested party that specifies individual exporters or producers covered by the order. The Department has determined that the petitioners' May 31, 2007, request for U.S. Customs and Border Protection data with respect to Samyang did not constitute a written request for an administrative review of Samyang's entries. Therefore, the Department erred in self–initiating the review of Samyang's entries. In accordance with 19 CFR 351.213(d)(2), we are rescinding this review with respect to Samyang.

The Department will issue appropriate assessment instructions directly to the U.S. Customs and Border Protection (CBP) 15 days after the publication of this notice. The Department will direct CBP to assess antidumping duties at the cash deposit rate in effect on the date of entry for entries of subject merchandise produced and/or exported by Samyang, Saehan, Estal, and Daeyang during the period May 1, 2006, through April 30, 2007.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 26, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–21532 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] The petitioners also asked for the Department to request U.S. Customs and Border Protection import data, for either direct shipments or shipments through Canada or Mexico, under the name ''Samyang,'' but did not request an administrative review of this company.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Notice of Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Flanges from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1994, the Department published the antidumping duty order on stainless steel flanges from India. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994 (February 9, 1994). On February 2, 2007, the Department published the *Notice of Opportunity to Request Administrative Review* for this order covering the POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended*

Investigation; Opportunity to Request Administrative Review, 72 FR 5007 (February 2, 2007). On February 28, 2007, we received requests for an administrative review for the period February 1, 2006, through January 31, 2007, from Nakshatra and Shree Ganesh.[1] On March 28, 2007, we initiated the administrative reviews. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 14516 (March 28, 2007).

Extension of Time Limit for Preliminary Results

The Tariff Act of 1930, as amended (the Act), at section 751(a)(3)(A), provides that the Department will issue the preliminary results of an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act provides further that if the Department determines that it is not practicable to complete the review within this time period, the Department may extend the 245-day period to 365 days.

The Department has determined that it is not practicable to complete the preliminary results by the current 245-day deadline of October 31, 2007. Based on our analysis of Nakshatra's comparison market sales listing, we have determined that we need to obtain data on Nakshatra's downstream sales in the comparison market. The Department requires additional time to request these data, analyze the response, and complete the antidumping calculation. Therefore, in accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department is extending the time limit for the preliminary results by 120 days to February 28, 2008.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: October 26, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–21530 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] We also received requests for administrative reviews from Echjay Forgings Pvt., Ltd., and Hilton Metal Forging, Ltd. However, both of these companies subsequently withdrew their requests for review in a timely manner. Therefore, we rescinded the administrative review with respect to these companies. *See Partial Rescission of Antidumping Duty Administrative Review: Certain Forged Stainless Steel Flanges from India*, 72 FR 41292 (July 27, 2007).

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Recruitment Notice for The Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Commerce is searching for individuals to help advise and assist the Department on manufacturing policies by applying to be members of The Manufacturing Council. The mission of The Manufacturing Council, a Secretarial Board at the Department of Commerce, is to ensure regular communication between the Federal Government and the manufacturing sector. The Council advises the Secretary of Commerce on government policies and programs that affect U.S. manufacturing and provides a forum for proposing solutions to industry-related problems. For information about the Council, please visit the Manufacturing Council Web site at: *http://www.manufacturing.gov/council.htm.*

The Department of Commerce is seeking applicants who are active manufacturing executives (Chairman, President or CEO level) that are leaders within their local manufacturing communities and industries. To the extent possible, the Department would like to ensure a balanced membership of U.S. manufacturing industry sectors, geographic locations, and business sizes. Potential candidates must be U.S. citizens.

Deadline: Applications for immediate appointment should be received prior to November 15, 2007. However, applications will accepted throughout FY2008 for consideration in the case of future vacancies.

Interested Applicants: Interested applicants should send a resume and cover letter to: The Manufacturing Council Executive Secretariat, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4043, Washington, DC 20230.

Dated: October 25, 2007.

Kate Worthington,

Executive Secretariat, The Manufacturing Council.

[FR Doc. 07–5427 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of an Opportunity To Apply for Membership on the U.S. Travel and Tourism Advisory Board

SUMMARY: The Department of Commerce is currently seeking applications for membership on the U.S. Travel and Tourism Advisory Board (Board). The purpose of the Board is to advise the Secretary of Commerce on matters relating to the travel and tourism industry.

SUPPLEMENTARY INFORMATION: The Office of Advisory Committees is accepting applications for Board members. Members shall serve until the Board's charter expires on September 21, 2009. Members will be selected based on our judgment of the candidates' proven experience in promoting, developing, and implementing advertising and marketing programs for travel-related or tourism-related industries; or the candidates' proven abilities to manage tourism-related or other service-related organizations. Each Board member shall serve as the representative of a tourism-related ''U.S. entity.'' For the purposes of eligibility, a U.S. entity shall be defined as a company or organization incorporated in the United States (or an unincorporated company or organization with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities. Priority may be given to chief executive officers or a similarly-situated officer of a tourism-related entity. Priority may also be given to individuals with international tourism marketing experience.

Officers or employees of State and regional tourism marketing entities are also eligible for consideration for Board membership. A State and regional tourism marketing entity, may include, but is not limited to, State government tourism office, State and/or local government supported tourism marketing entities, or multi-state tourism marketing entities. Again, priority may be given to chief executive officers or a similarly-situated officer.

Secondary selection criteria will ensure that the board has a balanced representation of the tourism-related industry in terms of point of view, demographics, geography and company or organization size. The Board members will be selected on the basis of their experience and knowledge of the tourism industry. Members will serve at the discretion of the Secretary of Commerce.

Board members shall serve in a representative capacity presenting the views and interests of the particular tourism-related sector in which they operate. Board members are not special government employees, and will receive no compensation for their participation in Board activities. Members participating in Board meetings and events will be responsible for their travel, living and other personal expenses. Meetings will be held regularly, usually in Washington, DC. The first Board meeting has not yet been determined.

To be considered for membership, please provide the following: (1) Name and title of the individual requesting consideration. (2) A letter of recommendation containing a brief statement of why the applicant should be considered for membership on the Board. This recommendation should also include the applicant's tourism-related experience. (3) The applicant's personal resume. (4) An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended. (5) If a state or regional tourism marketing entity, the functions and responsibilities of the entity. (6) The company's size and ownership, product or service line and major markets in which the company operates.

ADDRESSES: Please submit application information to Kate Worthington, Office of Advisory Committees, U.S. Travel and Tourism Advisory Board Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230.

Deadline: Applications for immediate appointment should be received prior to November 15, 2007. However, applications will accepted throughout FY2008 for consideration in the case of future vacancies.

FOR FURTHER INFORMATION CONTACT: Kate Worthington, (202) 482–4260.

Dated: October 25, 2007.

Kate Worthington,

Deputy Director, Office of Advisory Committees, U.S. Department of Commerce.

[FR Doc. 07–5426 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD46

Atlantic Highly Migratory Species; Advisory Panel

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

ACTION: Notice.

SUMMARY: NMFS solicits nominations for the Highly Migratory Species (HMS) Advisory Panel (AP). NMFS consults with and considers the comments and views of the AP when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, sharks, and billfish. Nominations are being sought to fill one-third of the posts on the HMS AP for a 3–year appointment. Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, and non-governmental organizations will be considered for membership in the AP.

DATES: Nominations must be received on or before December 3, 2007.

ADDRESSES: You may submit nominations and requests for the Advisory Panel Statement of Organization, Practices, and Procedures by any of the following methods:

- Email: *HMSAP.Nominations@noaa.gov*. Include in the subject line the following identifier: ''HMS AP Nominations.''
- Mail: Margo Schulze-Haugen, Chief, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Chris Rilling at (301) 713–2347 x109.

SUPPLEMENTARY INFORMATION:

Introduction

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of Advisory Panels to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment. The AP has consulted with NMFS on the HMS FMP (April 1999), Amendment 1 to the Billfish FMP (April 1999), Amendment 1 to the HMS FMP (December 2004), the Consolidated HMS FMP (March 2006), and Amendments 1 and 2 to the Consolidated HMS FMP (October 2007).

Procedures and Guidelines

A. Nomination Procedures for Appointments to the Advisory Panel

Nomination packages should include:

1. The name of the applicant or nominee and a description of his/her interest in HMS or in one species of sharks, swordfish, tunas, or billfish;

2. A statement of background and/or qualifications;

3. A written commitment that the applicant or nominee shall

actively participate in good faith in the tasks of the AP; and

4. A list of outreach resources that the applicant has at his/her disposal to communicate HMS issues to various interest groups.

Tenure for the HMS AP

Member tenure will be for 3 years (36 months), with approximately one-third of the members' terms expiring on December 31 of each year. Nominations are sought for terms beginning January 2008 and expiring December 2010.

B. Participants

Nominations for the AP will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community. The HMS AP consists of members who are knowledgeable about the fisheries for Atlantic HMS. Table 1 outlines the current representation of AP members whose terms are expiring by sector (i.e. commercial, recreational, environmental, or academic) and species (HMS, Tunas, Swordfish, Billfish, or Sharks). NMFS solicits nominations for these vacancies. Current representation on the HMS AP consists of 12 members representing commercial and/or recreational interests, 4 members representing environmental or academic interests, and 1 ICCAT Advisory Committee Chairperson. NMFS will seek to fill vacancies based principally on maintaining the current representation from each of the sectors, and secondarily by representation from the regions and/or species expertise.

TABLE 1. REPRESENTATION ON THE HMS AP BY SECTOR AND SPECIES FOR TERMS EXPIRING ON DECEMBER 31, 2007.

Sector	Species
Commercial	HMS
Commercial	HMS
Commercial	HMS
Commercial	Tuna
Commercial	Tuna
Environmental	Shark
Environmental	HMS
Environmental	HMS
Recreational	Billfish
Recreational	Billfish
Recreational	HMS
Recreational	Tuna

NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each sector must be adequately represented. The intent is to have a group that, as a whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of the AP. Criteria for membership include one or more of the following: (1) experience in the HMS recreational fishing industry; (2) experience in the HMS commercial fishing industry; (3) experience in fishery-related industries (e.g., marinas, bait and tackle shops); (4) experience in the scientific community working with HMS; and/or (5) representation of a private; non-governmental; regional, national, or international organization representing marine fisheries, environmental, governmental, or academic interests dealing with HMS.

Five additional members on the AP include one member representing each of the following Councils: New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The AP also includes 22 ex-officio participants: 20 representatives of the coastal states and two representatives of the interstate commissions (the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission).

NMFS will provide the necessary administrative support, including technical assistance, for the AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the AP meetings.

C. Meeting Schedule

Meetings of the AP will be held as frequently as necessary but are routinely held twice each year in the spring and fall. The meetings may be held in conjunction with public hearings.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 29, 2007.

Samuel D. Rauch III,

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

[FR Doc. E7–21534 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC40

Marine Mammals; File No. 1079–1828

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

ACTION: Notice; withdrawal of application.

SUMMARY: Notice is hereby given that an application, submitted by Peter Scheifele, University of Connecticut, 3636 Horsebarn Hill Road, Unit 4040, Storrs, Connecticut 06269, to conduct research on cetaceans and pinnipeds has been withdrawn.

ADDRESSES: The documents related to this action 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)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 5, 2006, a notice was published in the **Federal Register** (71 FR 38136) that an application for a scientific research permit had been filed by Peter Scheifele, University of Connecticut.

The applicant had requested authorization to conduct acoustic studies on cetaceans and pinnipeds being rehabilitated at the Mystic Aquarium, Connecticut. However, the applicant has failed to provide additional information and clarification, as requested by NMFS, regarding the proposed activities within 60 days. Pursuant to Federal Regulations (50 CFR 216.33(4)), the application has been withdrawn.

Dated: October 26, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–21553 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Dissemination Events and Registrations.

Form Number(s): None.

Agency Approval Number: 0651–00xx.

Type of Request: New collection.

Burden: 328 hours annually.

Number of Respondents: 4,100 responses per year.

Avg. Hours Per Response: The USPTO estimates that it takes 5 minutes (0.08 hours) to complete the event and PTDL (Patent and Trademark Depository Library) registrations, whether they are completed electronically or mailed to the USPTO. This includes the time to gather the necessary information, prepare the registration request, and submit it to the USPTO.

Needs and Uses: Under 35 U.S.C. 2(A)(2) the USPTO is ‘‘responsible for disseminating to the public information with respect to patents and trademarks.’’ The USPTO sponsors various events and collects information from both the public and the partnership members to plan these events and to arrange for the security of the events, if necessary. The public and PTDL members use the registration forms in this collection to request access to the USPTO-sponsored events. The USPTO uses the information collected from the registrations to plan for the various events, such as outreach to independent inventors, assistance to small businesses, and meetings discussing the prevention of unlawful intellectual property practices, international trends, cooperation between intellectual property entities, and long-term goals.

Affected Public: Individuals or households and businesses or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–00xx Dissemination Events and Registrations copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before December 3, 2007 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: October 26, 2007.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E7–21500 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Post Registration (Trademark Processing)

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed addition to this continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 31, 2007.

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

E-mail: Susan.Fawcett@uspto.gov. Include ''0651–0055 comment'' in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan Fawcett.

Mail: Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Sharon Marsh, Deputy Commissioner for Trademark Examination Policy, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313–1451, by telephone at 571–272–8900, or by e-mail at *Sharon.Marsh@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by the Trademark Act, 15 U.S.C. 1051 *et seq.*, which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the United States Patent and Trademark Office (USPTO).

Such individuals and businesses may also submit various communications to the USPTO, including requests to amend their registrations to delete goods or services that are no longer being used by the registrant. Registered marks remain on the register for ten years and can be renewed, but will be canceled unless the owner files with the USPTO a declaration attesting to the continued use (or excusable non-use) of the mark in commerce within specific deadlines. Applicants may also surrender a registration and in limited situations petition the Director to reinstate a registration that has been cancelled.

The forms in this information collection are available in electronic format through the Trademark Electronic Application System (TEAS), which may be accessed on the USPTO Web site. The USPTO is proposing to add one form to this collection for Section 7 Requests (PTO–1597). Customers may use a Section 7 Request to request a correction or amendment to the information appearing on the certificate of registration. Requests for changes that would result in a material alteration of the registration are not permitted under Section 7. Applicants may submit the proposed new form to the USPTO electronically through TEAS or submit the required information for the Section 7 Request to the USPTO on paper. The USPTO does not provide official forms for these paper submissions.

II. Method of Collection

By mail, facsimile, hand delivery, or electronic transmission.

III. Data

OMB Number: 0651–0055.

Form Number(s): PTO–1583, PTO/TM/1583, PTO–1597, PTO–1963, PTO–4.16, PTO/TM/4.16.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 133,587 responses per year, including 3,800 responses per year for Section 7 Requests.

Estimated Time per Response: The USPTO estimates that the public will require approximately 20 to 23 minutes (0.33 to 0.38 hours) to supply the information required for a Section 7 Request, depending upon the amount and type of information requested in a particular case.

Estimated Total Annual Respondent Burden Hours: 21,097 hours, including 1,349 hours for Section 7 Requests.

Estimated Total Annual Respondent Cost Burden: $6,413,488. The USPTO expects that the information in this collection will primarily be prepared by attorneys, though some submissions may be prepared by *pro se* applicants. Using the professional hourly rate of $304 for associate attorneys in private firms, the USPTO estimates that the respondent cost burden for submitting Section 7 Requests will be $410,096 per year, which would result in a total annual respondent cost burden of $6,413,488 for this collection.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Section 7 Request (TEAS)	20	1,900	627

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Section 7 Request (paper)	23	1,900	722
Totals	....	3,800	1,349

Estimated Total Annual Non-hour Respondent Cost Burden: $38,432,104. There are no capital start-up or maintenance costs associated with this information collection. However, there are additional filing fees and postage costs associated with the Section 7 Requests being added to this collection.

There is a $100 filing fee for Section 7 Requests unless the correction is due to a USPTO error, in which case there is no fee. The USPTO estimates that approximately 2,533 of the 3,800 expected Section 7 Requests would require the fee, for a total of $253,300 in filing fees being added to this collection due to these requests.

Customers may incur postage costs when submitting a Section 7 Request to the USPTO by mail. The USPTO estimates that it may receive up to 1,900 mailed submissions per year with an estimated postage cost of 41 cents per response, for a total of $779 in postage costs being added to this collection due to these requests.

The Section 7 Requests being added to this collection have an annual (non-hour) cost of $254,079 in the form of filing fees and postage costs. When added to the previously approved burden for this collection, the total annual (non-hour) costs for this collection would be $38,432,104.

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, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 26, 2007.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E7–21501 Filed 10–31–07; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This application provides citizens with the opportunity to apply for team leader positions with the AmeriCorps NCCC program.

Currently, the Corporation is soliciting comments concerning its proposed renewal of AmeriCorps NCCC Team Leader Application. This application is used by applicants applying for a team leader position at one of NCCC's regional campuses.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section December 31, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, AmeriCorps NCCC; Attention Nicholas Zefran, Director of Member Services; 1201 New York Avenue, NW., 10th Floor; Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3462, Attention Nicholas Zefran, Director of Member Services, AmeriCorps NCCC.

(4) Electronically through the Corporation's e-mail address system: *nzefran@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Nicholas Zefran, 202–606–6703, or by e-mail at *nzefran@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected 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).

Background

AmeriCorps NCCC is a full-time residential national service program for 18–24-year-olds. The mission is to strengthen communities and develop leaders through team-based national and community service. Teams help communities meet compelling needs in the areas of disaster relief, education, housing, the environment and other unmet needs. The AmeriCorps NCCC solicits applications for team leaders to lead teams of 10–12 AmeriCorps members in this full-time national service program.

Current Action

The Corporation seeks to renew and revise the current application. This application will be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on 12/31/2007.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: NCCC Team Leader Application.

OMB Number: 3045–0005.

Agency Number: None.

Affected Public: Citizens interested in serving as team leaders.

Total Number of Applicants: 300.

Frequency: Annually.

Average Time Application: 1 hour.

Estimated Total Burden Hours: 300 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 26, 2007.

Merlene Mazyck,

*Director, AmeriCorps*NCCC.*

[FR Doc. E7–21519 Filed 10–31–07; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Financial Management Survey (FMS) form. The FMS is a tool used by Corporation staff to assess the financial management capabilities of applicants for Corporation funding.

Copies of the information collection requests can be obtained by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section December 31, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Office of Grants Management; Attention Stacy Bishop, Senior Grants Officer; 1201 New York Avenue, NW., Room 8100; Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100, at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3485, Attention Stacy Bishop, Senior Grants Officer.

(4) Electronically through the Corporation's e-mail address system: *sbishop@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Stacy Bishop, 202–606–6962, or by e-mail at *sbishop@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected 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).

Background

The Corporation developed the Financial Management Survey to implement its pre-award policy (CFO–029, effective 1/17/02) which provides reasonable assurance that federal grant funds will be expended and accounted for in ways that meet program objectives, the award terms and conditions, and applicable federal statutes, regulations and guidelines. The Financial Management Survey standardizes the pre-award process and ensures uniform consideration of the capacity of prospective grantees of the Corporation to manage federal funds.

The Financial Management Survey will be used for the following purposes:

(1) As a pre-award assessment tool of the capacity of a potential grantee to manage federal funds in excess of $100,000; and

(2) As part of the basis for determining the financial management areas in which a prospective grantee, should it receive an award from the Corporation, may warrant technical assistance.

Current Action

The Corporation seeks to renew and revise the current Financial Management Survey. The revised Financial Management Survey is more user friendly, eliminates duplication in the survey, and clarifies questions to further allow Corporation staff to assess financial capabilities. The survey will otherwise be used in the same manner as the existing survey. The Corporation also seeks to continue using the current survey until the revised survey is approved by OMB. The current survey is due to expire on January 31, 2008.

Type of Review: Renewal with minor revisions.

Agency: Corporation for National and Community Service.

Title: Financial Management Survey Form.

OMB Number: 3045–0102.

Agency Number: None.

Affected Public: First-time grant applicants or current grantees recompeting for funding.

Total Respondents: 20 annually.

Frequency: One (1) time.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 20 hours annually.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 26, 2007.

Peg Rosenberry,

Director, Office of Grants Management .

[FR Doc. E7–21529 Filed 10–31–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Announcement of IS–GPS–800 Interface Control Working Group (ICWG) Follow-On Meeting

AGENCY: Department of the Air Force.

ACTION: Meeting notice.

SUMMARY: This notice informs the public that the Global Positioning Systems Wing will be hosting a follow-on meeting to the Public ICWG that occurred on 25 Sept 2007 at the ION GNSS Conference in Ft. Worth, TX. The meeting will take place on 19 Nov 2007 at the SAIC Facility in El Segundo and will address the action item to review a ''tracked changes'' version of the IS–GPS–800. The meeting will consist of a line-by-line review and discussion of all L1 MBOC spreading codes and L1 bandwidth augmentation changes within the document. A tracked change ''was/is'' version of the document can be found at the following address for review: *http://www.losangeles.af.mil/library/factsheets/factsheet.asp?id=9364.* To make additional comments, please open the ''Comment Form Draft IS–GPS–800'' on the Web site and e-mail comments to Thomas Davis and Capt Garrett Knowlan by 5 Nov 2007 (contact info below). For those who would like to attend and participate in this meeting, you are requested to register by 14 November 2007. Please send the registration to *thomas.davis.ctr@losangeles.af.mil* and provide your name, organization, telephone number, address, and country of citizenship. Foreign nationals must have their passports available on the day of the meeting or admittance will be denied. The parking lot can be entered via Sepulveda Blvd or Grand Ave. The outside parking lot is available for all cars, but the underground parking structure is only for those with monthly parking passes. Parking validation is provided.

DATES: Monday, 19 November 2007, 8 a.m.–4 p.m., located at SAIC, El Segundo, 300 N. Sepulveda, Suite 3000, El Segundo, CA 90245.

FOR FURTHER INFORMATION CONTACT: Thomas Davis, *thomas.davis@linquest.com*, 1–310–416–8440, or Captain Michael Whiting, *Michael.Whiting@losangeles.af.mil*, 1–310–653–3936.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–21499 Filed 10–31–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Performance Review Boards

AGENCY: Department of the Air Force.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the Air Force Performance Review Boards.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with the regulations prescribed by the U.S. Office of Personnel Management, one or more SES performance review boards. The purpose of the Performance Review Board is to review records on all Air Force SES, DISES, SL and ST members and to make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, and pay level increases.

The following have been designated as members of the Air Force Performance Review Boards:

General Bruce Carlson, Commander, AF Materiel Command—Board President—Lieutenant General Rod Bishop, Commander, Third Air Force.

Mr. David Tillotson, Deputy Chief of Staff for Warfighting Integration.

Mrs. Barbara Westgate, AF Materiel Command Executive Director.

Mr. Timothy Leyland, Assistant Deputy Chief of Staff, Manpower & Personnel.

Mrs. Patricia Young, Deputy to the Commander, Military Surface Deployment and Distribution Command.

Mr. Richard Gustafson, Deputy Assistant Secretary (Financial Operations).

Mr. Steven Cantrell, Director, Analysis & Estimates, DCS Intelligence, Surveillance and Reconnaissance.

Mr. Michael Rhodes, OSD ODAM WHS, Non-Air Force SES Senior Board Member.

Mrs. Mary Lacey, NSPS Program Executive Office, Non-Air Force SES Senior Board Member.

Mr. John Salvatore, OSD OUDSI, Non-Air Force DISES Board Member.

FOR FURTHER INFORMATION CONTACT: Major Therese Schuler, Air Force Senior Executive Management Office, AF/DPSS, 1040 Air Force Pentagon, Washington, DC 20330–1040, (703) 695–8040.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E7–21494 Filed 10–31–07; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Great Salt Lake Minerals Corporation's Solar Evaporation Pond Expansion Project Within the Great Salt Lake, Box Elder County, UT

AGENCY: Department of the Army; U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (Corps), Sacramento District, will prepare a draft Environmental Impact Statement (DEIS) for Corps authorization actions for the proposed Great Salt Lake Minerals Solar Evaporation Ponds Expansion project. The overall project purpose is to expand extraction capability for potassium at the Great Salt Lake Mineral Corporation's facilities. The proposed expansion would add approximately 33,000 acres of solar evaporative ponds, impacting approximately 30,713.75 acres of waters of the United States, and reducing the need to import raw potassium from other sources. The DEIS will address impacts such as wildlife habitat, water quality, Great Salt Lake water elevations, wetlands, hydrology, cultural resources, transportation, endangered species and industry.

DATES: The projected date for public release of the DEIS is October 2008. Three public scoping meetings will be held. The first scoping meeting will be held on November 7, 2007 from 5–9 p.m. The second public meeting will be on November 8, 2007 from 5–9 p.m. The third meeting will be held on November 14, 2007 from 5–9 p.m.

ADDRESSES: The November 7 meeting will be held at South Davis Junior High School, 298 West 2600 South, Bountiful, Utah. The November 8 meeting will be held at the Ogden Nature Center, 966 W.

12th Street, Ogden, Utah. The November 14 meeting will be held at the Airport Inn Hotel, 2333 W. North Temple Street, Salt Lake City, Utah. Written comments may be mailed to Mr. Jason Gipson, 533 West 2600 South, Suite 150, Bountiful, Utah 84010. All comments must be received on or before December 2, 2007.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be directed to the Corps project manager, Mr. Jason Gipson at 801–295–8380 x14, or e-mail at *jason.a.gipson@usace.army.mil.* Please refer to identification number 200700121.

SUPPLEMENTARY INFORMATION: Great Salt Lake Minerals Corporation (GSLM) has applied for Department of the Army authorization under Section 404 of the Clean Water Act. The project as proposed may also require other Federal, State and local authorizations including Utah State Public Lands Lease Agreements.

Great Salt Lake Minerals Corporation currently operates approximately 43,000 acres of evaporative ponds located on the east and west shores of the Great Salt Lake. A 21,000-acre evaporation facility is located on the west shore of the North Arm of the Great Salt Lake and a 22,000-acre evaporation facility is located on the east shore of the Bear River Bay. The existing solar evaporation ponds facilities are located within the Great Salt Lake, i.e., the ponds are located below 4205 mean sea level, which is below the high water mark of the Great Salt Lake. These facilities allow the Corporation to extract about one-half of the potassium needed in their production of potassium sulfate. The company draws naturally occurring brine from the lake into shallow ponds and allows solar evaporation to produce sulfate of potash, as well as salt and magnesium chloride minerals. Sulfate of potash is a specialty fertilizer that improves the yield and quality of high-value crops such as fruits, vegetables, tea, tree nuts and turf grasses. The Great Salt Lake facility has operated on the lake for 40 years. At present, the remainder of the potassium is imported from other sources. The proposed expansion of the solar ponds will allow Great Salt Lake Minerals to reduce or discontinue their reliance on imported potassium.

The applicant is proposing to construct three additional solar evaporation ponds totaling approximately 33,000 acres. The proposed project includes an 8,000-acre pond on the east side of the Great Salt Lake in the Bear River Bay. Brine would be pumped to and from the new pond with existing pump stations; however, the capacity of these pump stations would be increased proportional to the new pond acreage. Additional feed brine for this new pond would come from the North Arm of the Great Salt Lake (Gunnison Bay), flowing through existing east side ponds.

In addition, on the west side of the lake, two new solar ponds would be added to the existing west side complex, an 18,000-acre Dolphin Island expansion pond and a 7,000-acre pond at the southern end of Clyman Bay between the Union Pacific Railway and several existing ponds. A new feed canal into the lake and a new pump station would be constructed on the north end of the proposed Dolphin Island pond. Diesel driven pumps, similar to those currently in use, would pump brine from the new feed canal to the new pond. Existing pumps would be used to pump brine from the new pond to an existing pond. The total 25,000-acre pond expansion on the west side would increase the concentration of brine transferred to an existing gravity-flow trench for transport to the east ponds in the Bear River Bay.

Dikes would be built to accommodate the pond expansion and impound the waters of the respective areas. On the east side of the lake approximately 540,000 cubic yards of fill would be discharged into Bear River Bay to create the dikes. On the west side of the lake, dike construction would require approximately 900,000 cubic yards of fill to be discharged into open water in the vicinity of Clyman Bay.

The proposed project areas currently include saline open water, sporadically inundated playa lakebed, seasonally flooded playa, saline wetlands, rip-rapped dikes and sandy upland habitats. These areas are located adjacent to the existing evaporation pond facilities. The Corps of Engineers verified a delineation on October 10, 2007 which identified approximately 34,180.08 acres of waters of the United States, including 21.4 acres of saline wet meadow wetlands, 1,102.94 acres of seasonally inundated playa above the high water mark of the western side of the Great Salt Lake and 33,055.74 acres of seasonally or sporadically inundated playa lake bed below the high water mark of the Lake. The applicant asserts that approximately 30,713.75 acres of waters would be lost due to project construction under the proposed alternative.

The applicant has not proposed compensatory mitigation for project impacts. The determination of appropriate compensatory mitigation will be determined through public scoping and impact analysis of the EIS process.

The proposed project will not affect any Federally-listed threatened or endangered species, however, it may affect state-listed special status species. Once a habitat assessment of the areas has been completed, the Corps will consult with state and Federal wildlife agencies. The Corps will also consult with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act for properties listed or potentially eligible for listing on the National Register of Historic Places, as appropriate.

A number of on-site and off-site alternatives, including the no action alternative, will be evaluated in the DEIS in accordance with NEPA and the Section 404(b)(1) guidelines.

As part of the Corps 404 permitting process, three pre-application interagency meetings were held to provide information and identify issues and concerns. In addition, a meeting was held with local environmental organizations for the same purposes. Preliminary issues identified as part of this process include: Water quality, heavy metals, nutrient loading, fresh water exchange, changes in salinity, and brine shrimp habitat and economic issues. Additionally, potential avian impacts were identified to waterfowl, shorebirds, and raptors including the American white pelican, snowy plover, Canada goose, and others.

The above determinations are based on information provided by the applicant and upon the Corps' preliminary review. The Corps is soliciting verbal and written comments from the public, Federal, States and local agencies and officials, Native American tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. The Corps' public involvement program includes multiple opportunities for interested parties to provide written and oral comments. Affected Federal, State, local agencies, Indian tribes, and other interested private organizations and the general public are invited to participate.

Dated: October 24, 2007.

Michael S. Jewell,

Chief, Regulatory Branch, Sacramento District, Corps of Engineers.

[FR Doc. 07–5437 Filed 10–31–07; 8:45 am]

BILLING CODE 3710–EH–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

SUMMARY: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public hearing and meeting described below. The Board will conduct a public hearing and meeting pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

TIME AND DATE OF MEETING: 6 p.m., December 5, 2007.

PLACE: Duane W. Smith Auditorium, 1400 Diamond Drive, Los Alamos, New Mexico 87544. Additionally, as part of the Board's E-Government initiative, the hearing and meeting will be video recorded. A link to the video recording will be available on the Board's Web site (*http://www.dnfsb.gov*) following the hearing and meeting.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: In this public hearing and meeting, the Board will assess the safety posture at Los Alamos National Laboratory (LANL), including actions taken in response to the Board's letter, dated February 1, 2007, to the Acting Administrator of the National Nuclear Security Administration (NNSA). In that letter, the Board suggested actions that would substantially improve the safety posture of the laboratory. These actions include strengthening federal safety oversight, improving safety bases and ensuring the efficacy of safety systems, developing effective institutional safety programs, eliminating known hazards, and increasing federal management of new projects. The Board anticipates testimony from the laboratory's management and operation contractor, Los Alamos National Security (LANS), and senior management officials from NNSA regarding actions, both taken and planned, to improve the health and safety of workers at defense nuclear facilities at the laboratory and the public. Under the Atomic Energy Act of 1954, as amended, the Board is required, among other things, to review and evaluate the content and implementation of standards relating to the design, construction, operation, and decommissioning of Department of Energy (DOE) defense nuclear facilities, including all applicable DOE orders, regulations, and requirements pertaining to such facilities. The Board is also responsible for investigating any event or practice at DOE defense nuclear facilities which the Board determines has adversely affected, or may adversely affect, the health and safety of the workers and the public. In this December 5, 2007, hearing and meeting, the Board will examine how NNSA and LANS will ensure adequate protection of the public health and safety, including that of the workers, and safety performance at laboratory defense nuclear facilities. The Board will collect information needed to understand and address any health or safety concerns that may require Board action with respect to operations at defense nuclear facilities at LANL. This information will include, but is not limited to, presentations from NNSA and LANS senior management officials and NNSA Los Alamos Site Office personnel. The public hearing portion of this proceeding is authorized by 42 U.S.C. 2286b.

CONTACT PERSON FOR MORE INFORMATION: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearing and meeting may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to 4 p.m. EST on December 4, 2007, will be scheduled for time slots. While the hearing and meeting will start at 6 p.m., time slots for speakers from the public will begin at approximately 8 p.m. The Board will post a schedule for speakers at the entrance to the Duane W. Smith Auditorium at the start of the hearing and meeting.

Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate by the Members. Documents will be accepted at the hearing and meeting or may be sent to the Defense Nuclear Facilities Safety Board's Washington, DC office. The Board will hold the record open until January 5, 2008, for the receipt of additional materials. A transcript of the hearing and meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the hearing and meeting, to recess, reconvene, postpone, or adjourn the hearing and meeting, conduct further reviews, and otherwise exercise its powers under the Atomic Energy Act of 1954, as amended.

A.J. Eggenberger,

Chairman.

[FR Doc. 07–5446 Filed 10–30–07; 9:30 am]

BILLING CODE 3670–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of public meeting.

DATE AND TIME: Tuesday, November 13, 2007, 10 a.m.–1 p.m.

PLACE: U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 150, Washington, DC 20005.

AGENDA: Commissioners will discuss and consider adopting a strategic plan; Commissioners may consider an internal policy for handling State requests to change State-specific instructions to the National Voter Registration Form; Commissioners will consider individual State requests to change State-specific instructions to the form; Commissioners will receive the following presentations: A report on a voter registration data base study; an update on recommendations by the Technical Guidelines Development Committee (TGDC) for voting systems guidelines and timeline leading to adoption of a final version; a report on a draft voting systems test laboratory accreditation manual; Commissioners will discuss other administrative matters.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–5448 Filed 10–30–07; 9:30 am]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08–30–000]

O'Connor & Hewitt, LTD., Complainant v. Energy Transfer Partners, L.P., La Grange Acquisition, L.P., d/b/a, Energy Transfer Company, ETC Marketing, Ltd., Houston Pipeline Company and Energy Transfer Equity, L.P.; Notice of Complaint

October 25, 2007.

Take notice that on October 24, 2007, O'Connor & Hewitt, LTD., (O'Connor) filed a formal complaint against Energy Transfer Partners, L.P., La Grange Acquisition, L.P., d/b/a Energy Transfer Company, ETC Marketing, Ltd., Houston Pipeline Company, and Energy Transfer Equity, L.P. (collectively, ETP) pursuant to 15 U.S.C. 717o, 18 CFR 385.206, and 18 CFR 284.403 (2005), alleging that (1) ETP violated the Natural Gas Act (NGA) by failing to make its sales for resale at the Houston Ship Channel (HSC) at negotiated rates; (2) ETP intentionally engaged in market manipulation in violation of 18 CFR 284.403 (2005) (Market Behavior Rule 2) and 18 CFR 1c.1 (2006) (Part 1c); (3) ETP knowingly submitted misleading trade data to Platts for it to include in its calculation of the *Inside FERC HSC Index* in violation of Part 284; and (4) ETP's violations of the NGA and the Commission's Rules caused O'Connor to suffer quantifiable economic losses.

O'Connor certifies that copies of the complaint were served on ETP's attorneys and contacts listed on the Commission's list of Corporate Officials.

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 November 8, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21479 Filed 10–31–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP08–29–000]

The Rockies Express Shippers, Complainant, v. Northern Natural Gas Company, Respondent; Notice of Complaint

October 25, 2007.

Take notice that on October 24, 2007, the Rockies Express Shipper (REX Shippers), pursuant to section 206 of the Commission's Rules of Practice and Procedures, 18 CFR 385.206, filed a complaint against Northern Natural Gas Company (Northern) alleging that Northern (i) failed to post the availability of receipt point capacity at the Rockies Express Pipeline (REX) Receipt Point on Northern, (ii) unlawfully tied access to REX Receipt Point capacity to new backhaul service which Northern was not authorized to offer, (iii) unlawfully discriminated against the REX Receipt Point and in favor of receipts of gas from Trailblazer, and (iv) imposed an unjust and unreasonable charge for backhaul service. As a remedy, inter alia the REX Shippers request the Commission to void Northern's previous open season and order Northern to conduct a new open season in compliance with Northern's Tariff and Commission regulations.

The REX Shippers certify that a copy of the complaint has been served on the contacts for Northern as listed on the Commission's list of Corporate Officials.

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 November 14, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21482 Filed 10–31–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–365–000; Docket No. CP06–366–000]

Bradwood Landing, LLC, NorthernStar Energy, LLC; Notice of Additional Public Meetings to Take Comments on the Draft Environmental Impact Statement for the Proposed Bradwood Landing LNG Project

October 25, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is issuing this notice to announce two additional public meetings in Oregon to take comments on the draft Environmental Impact Statement (EIS) issued by the FERC on August 17, 2007 for the proposed Bradwood Landing liquefied natural gas (LNG) Project. The draft EIS addresses the proposal by Bradwood Landing, LLC to construct and operate an LNG import terminal in Clatsop County, Oregon, about 38 miles up the Columbia River from its mouth, and the associated 36-mile-long natural gas sendout pipeline proposed by NorthernStar Energy, LLC that would cross portions of Clatsop and Columbia Counties, Oregon, and Cowlitz County, Washington, to connect the Bradwood Landing LNG terminal with the existing Williams Northwest Pipeline Company interstate pipeline system near Kelso, Washington.

On October 5, 2007, the FERC issued a notice for four public meetings to be held at various locations in Oregon and Washington in November 2007. We are supplementing those meetings with two additional public meetings in Oregon on the dates, time, and locations listed below:

Date and time	Location
Monday, November 5, 2007, 6:30 p.m. (PST).	Clatskanie Middle/High School Auditorium, 471 SW Belair Dr., Clatskanie, OR 97016; Telephone: 503–728–2146.
Tuesday, November 6, 2007, 9 a.m. (PST).	Clatskanie River Inn—Cedar Room, 600 E. Columbia River Highway, Clatskanie, OR 97016; Telephone: 503–728–9000.

These events are posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21483 Filed 10–31–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–451–000]

Black Bayou Storage, LLC; Notice of Field Trip for the Proposed Black Bayou Gas Storage Project

October 25, 2007.

The staff of the Federal Energy Regulatory Commission (Commission) will conduct a field trip for the Black Bayou Gas Storage Project involving construction and operation of facilities by Black Bayou Storage, LLC in Cameron Parrish and Calcasieu Parrish, Louisiana.

The Commission staff will conduct a field trip of storage caverns, portions of the pipeline, and related facilities on November 7, 2007. Anyone interested in participating in the field trip may attend, and they must provide their own transportation. The staff will start the field trip on Wednesday, November 7 at approximately 7:30 a.m. (CST). The staff will conduct a tour by marsh buggy at about 11:15 a.m., and then tour the facilities by helicopter at about 2 p.m. Only Commission staff and company representatives will be able to use the marsh buggy and helicopter. The Commission staff, company representatives, and interested participants will meet in the parking lot at the following location: Brown's Food Center, 620 Main St., Hackberry, LA 70645, Telephone: (337) 762–4632.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–21480 Filed 10–31–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0082, FRL–8490–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping Requirements Under EPA's Natural Gas STAR Program; EPA ICR No. 1736.05, OMB Control Number 2060–0328

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). ICR is scheduled to expire on 03/31/2008.

DATES: Comments must be submitted on or before December 31, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0082 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax Number:* 202–566–9744.
- *Phone Number:* 202–566–1742.
- *Mail:* Docket ID No. EPA–HQ–OAR–2004–0082, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460 (Attention Docket EPA–HQ–OAR–2004–0082). Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0082. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Suzie Waltzer, Office of Atmospheric Program, Climate Change Division, 6207J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9544; fax number: 202–343–2202; e-mail address: *waltzer.suzanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0082, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the previously approved Information Collection Request EPA ICR No. 1736.04, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does this Apply to?

Docket ID No. EPA–HQ–OAR–2004–0082

Affected entities: Entities potentially affected by this action are those which produce, process, transport, and distribute natural gas.

Title: Reporting and Recordkeeping Requirements Under EPA's Natural Gas STAR Program.

ICR numbers: EPA ICR No. 1736.05, OMB Control number 2060–0328.

ICR status: This ICR is currently scheduled to expire on 3/31/2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Natural Gas STAR is an EPA-sponsored, voluntary program that encourages natural gas companies to adopt cost effective methods for reducing methane emissions. Natural Gas STAR Partners agree to implement cost-effective technologies and practices to reduce methane emissions, which will save participants money and improve environmental quality. EPA needs to collect information to establish program participation and to obtain general information on new Natural Gas STAR Partners. EPA also uses the information collection to evaluate a Partner's progress and performance, assess overall program results, and develop technical guidance documents for the benefit of the industry. Information collection is accomplished through the use of an annual reporting process that allows companies to report their accomplishments in either a traditional hard-copy format or electronically. Participation in Natural Gas STAR is voluntary. Natural Gas STAR Partners may designate information submitted under this ICR as confidential business information. EPA will treat all such information as confidential business information and will not make the company or agency-specific information collected under this ICR available to the general public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 41 hours per facility. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 130.

Frequency of response: 130.

Estimated total average number of responses for each respondent: varies.

Estimated total annual burden hours: 5,348.

Estimated total annual costs: $482,569.

Are There Changes in the Estimates From the Last Approval?

The overall reporting burden for respondents has increased from the previous ICR. Burden hours increased from 4,432 to 5,348 hours per year and costs increased from $402,141 to $482,569. This change is largely a result of an increase in the number of program participants.

What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 24, 2007.

Gloria DeBolt,

Acting Director, Climate Change Division.

[FR Doc. E7–21524 Filed 10–31–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8490–3]

Reissuance of General NPDES Permits (GPs) for Aquaculture Facilities in Idaho Subject to Wasteload Allocations Under Selected Total Maximum Daily Loads (Permit Number IDG–13–0000), Cold Water Aquaculture Facilities in Idaho (Not Subject to Wasteload Allocations) (Permit Number IDG–13–1000), and Fish Processors Associated With Aquaculture Facilities in Idaho (Permit Number IDG–13–2000)

AGENCY: Environmental Protection Agency.

ACTION: Final notice of issuance of three NPDES general permits.

SUMMARY: On September 27, 2004, a general permit regulating the activities of aquaculture facilities in Idaho and associated on-site fish processors expired. On June 19, 2006, the Director, Office of Water and Watersheds, EPA Region 10, proposed to reissue three general permits to cover facilities covered under the previous permit. EPA provided a public meeting on June 29, 2006 and a public hearing on September 26, 2006, both in Twin Falls, Idaho, in the midst of a 103-day public comment period. On June 7, 2007, the Director reproposed modified draft permits for GPs #IDG130000 and #IDG132000; the 45-day comment period ended on July 23, 2007.

On October 5, 2007, the Idaho Department of Environmental Quality certified under Section 401 of the Clean Water Act that, if the permittees comply with the terms and conditions imposed by the permits, there is reasonable assurance that the discharges will comply with the applicable requirements of the Clean Water Act and Idaho Water Quality Standards.

EPA received 38 comments on the GPs and has prepared a Response to Comments to explain changes made in the permits based on the comments and reasons for not making changes. EPA has determined that each facility that submitted a new Notice of Intent (NOI) after January 1, 2004, will be automatically covered by the GPs. These general permits also will cover some facilities that currently operate under individual permits, thereby terminating the authorization to discharge under the individual permits.

DATES: The GPs will become effective December 1, 2007. The permits will expire November 30, 2012.

ADDRESSES: Copies of the GPs and the Response to Comments may be requested from Audrey Washington, EPA Region 10, 1200 Sixth Avenue, Suite 900, OWW–130, Seattle, WA 98101 or by e-mail to: *washington.audrey@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the general permits, fact sheets, and response to comments are available on the EPA Region 10 Web site at *http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/General+NPDES+Permits#Aquaculture*. They can also be requested by phone from Audrey Washington at (206) 553–0523.

SUPPLEMENTARY INFORMATION:

A. Endangered Species Act

EPA has determined that issuance of the General Permits is not likely to adversely affect threatened or endangered salmonids, designated critical habitat, or essential fish habitat. Reissuance of the processor permit and WLA permit for cold water facilities is likely to adversely affect Utah valvata snail, Snake River physa snail, Bliss Rapids snail, and Banbury Springs lanx. Reissuance of the Wasteload Allocation Permit to four warm water facilities facilities in Gooding and Twin Falls counties is likely to adversely affect the Utah valvata snail, Snake River physa, and Bliss Rapids snail because of the increase in temperature of the receiving streams in the immediate vicinity of these facilities. EPA has determined that issuance of the General Permits will have no affect on any terrestrial threatened or endangered species or their designated critical habitat. Consultation with U.S. Fish and Wildlife Service is ongoing.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

C. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. Although general permits are considered to be adjudications and not rules and therefore are not legally subject to the Regulatory Flexibility Act, as a matter of policy EPA is evaluating on an individual basis whether or not a specific general permit would have a significant economic impact on a substantial number of small entities. Upon considering EPA's current guidance, entitled *Final Guidance for EPA Rulewriters: Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement and Fairness Act*, and the fact that each of these general permits affects less than 100 facilities, EPA concludes that these general permits do not have a significant economic impact on a substantial number of small entities and that the RFA does not call for further quantitative analysis of impacts.

E. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' (defined to be the same as ''rules'' subject to the RFA) on tribal, State, and local governments and the private sector. However, general NPDES permits are not ''rules'' subject to the requirements of 5 U.S.C. 553(b) and are therefore not subject to the UMRA.

F. Appeal of Permits

Any interested person may appeal the general permits in the Federal Court of Appeals in accordance with Section 509(b)(1) of the Clean Water Act. This appeal must be filed within 120 days after the permit effective date. Persons affected by the permits may not challenge the conditions of the permits in further EPA proceedings (See 40 CFR § 124.19). Instead they may either challenge the permit in court or apply for an individual NPDES permit.

Dated: October 25, 2007.

Christine Psyk,

Associate Director, Office of Water & Watersheds, Region 10, U.S. Environmental Protection Agency.

[FR Doc. E7–21527 Filed 10–31–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 22, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 3, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via internet at: *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., Washington, DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the OMB's ROCIS system at: *http://www.reginfo.gov/public/do/PRAMain*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0626.

Title: Section 90.483, Permissible Methods and Requirements of Interconnecting Private and Public Systems of Communications.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 100 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to the OMB as a revision during this comment period to obtain the full three-year clearance from them. There is a change in the number of respondents/responses, burden hours and annual costs due to the elimination of two rule sections in this collection. Sections 90.168 and 90.425 have been removed from this information collection (IC). Section 90.168 is covered under OMB Control Number 3060–0076; and section 90.425 is covered under 3060–0599; therefore, only section 90.483 remains in this IC.

Section 90.483 contains permissible methods and requirements of interconnecting private and public systems of communications. This section allows Part 90 Commercial Mobile Radio Service (CMRS) providers to interconnect by any technically feasible means. Various subsections require that licensees obtain the consent of co-channel licensees (third party disclosure requirement) within a 75 mile radius of the interconnected base station transmitter and submit a statement (reporting requirement) to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–21025 Filed 10–31–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 26, 2007.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number. For further information contact Cheryl B. Williams, Federal Communications Commission, (202) 418–0497 or via the Internet at *CherylB.Williams@fcc.gov*.

OMB Control No.: 3060–0106.

Expiration Date: 5/31/2010.

Title: Part 43—Reporting Requirements for U.S. Providers of International Telecommunications Services.

Form No.: N/A.

Estimated Annual Burden: 134 respondents; 134 responses; 2,412 total annual hours; 18 hours per respondent.

Needs and Uses: U.S. providers of international telecommunications services must comply with the Federal Communications Commission's reporting requirements pursuant to 47 CFR 43.53, 43.61 and 43.82. The Commission's primary goal underlying the reporting requirements for international carriers has been and continues to be the protection of U.S.

consumers and carriers from potential harm caused by instances of insufficient competition caused by the exercise of market power by foreign incumbent carriers. The Commission's goals in regulating the U.S.-international marketplace have been (1) to promote effective competition in the global market for communications services; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and, (3) to encourage foreign governments to open their communications markets. The Commission's ability to respond to failures in the U.S.-international market depends upon having adequate information about the market. The Commission uses the information provided by the traffic and revenue reports and the circuit-status report to ensure compliance with its international rules and policies.

If the information collection was not conducted or was conducted less frequently, the Commission would not be able to ensure compliance with its international rules and policies. Furthermore, the Commission would not have sufficient information to take measures to prevent anticompetitive conduct in the provision of international communications services. The Commission would not be able to promote effective competition in the global market for communications services. The lack of effective competition would adversely affect the U.S. revenues in the telecommunications industry. The agency would not be able to comply with the international regulations stated in the World Trade Organization (WTO) Basic Telecom Agreement.

OMB Control No.: 3060–0572.

Expiration Date: 5/31/2010.

Title: Filing Manual for Annual International Circuit Status Reports.

Form No.: N/A.

Estimated Annual Burden: 138 respondents; 138 responses; 1,300 total annual hours; 11 hours average per respondent.

Needs and Uses: The Federal Communications Commission obtains circuit status reports from international carriers pursuant to 47 CFR Section 43.82 of the Commission's rules. The information compiled by the Commission from the reports is useful to current industry members, potential new entrants into the industry, and the Commission. The information is aggregated and published by the Commission for the use and benefit of all industry members. The information is critically important for U.S. carriers in the preparation of their international business plans, in monitoring for nondiscriminatory provisioning of circuits by U.S. and foreign carriers, particularly in markets dominated by incumbent foreign carriers, and for determining the availability of capacity, or the lack thereof, for market entry and expansion decisions. The information will aid the industry in determining competitive opportunities and thereby supports the Commission's efforts to achieve a more competitive international telecommunications marketplace. In addition, the information will allow the Commission to comply with the statutory requirements of the Omnibus Budget Reconciliation Act of 1993. Without this information, the Commission's efforts to achieve a more competitive international telecommunications marketplace will be impeded. Also, the Commission would not have the information necessary to comply with its statutory requirements under the Omnibus Budget Reconciliation Act of 1993.

In addition, Congress mandated the Commission to collect annual regulatory fees on active equivalent 64 kilobits international circuits. Without such information, the Commission would not be able to fulfill its statutory obligation.

OMB Control No.: 3060–0955.

Expiration Date: 2/28/2010.

Title: 2 GHz Mobile Satellite Service Reports.

Form No.: N/A.

Estimated Annual Burden: 9 respondents; 9 responses; 27 total annual hours; 3 hours per response.

Needs and Uses: The Federal Communications Commission collects information under *OMB Control No.* 3060–0955 pursuant to 47 C.F.R. Sections 25.114, 25.115, 25.133, 25.136, 25.137, 25.143, 25.202, 25.203 and 25.279. The information is used by the Commission in carrying out its duties under the Communications Act of 1934, as amended, and to insure the public interest, safety and convenience are served. Without such information, the Commission could not determine whether to permit the respondent to provide telecommunication services in the U.S. and therefore fulfill its statutory and responsibilities in accordance with the Communications Act of 1934, as amended.

OMB Control No.: 3060–0994.

Expiration Date: 1/31/2010.

Title: Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, L Band and the 1.6/2.4 GHz Band

Form No.: N/A.

Estimated Annual Burden: 161 respondents; 161 responses; 1,326 total annual hours; .50 hours per response.

Needs and Uses: The Federal Communications Commission (''Commission'') collects information from Mobile Satellite Service (MSS) providers pursuant to 47 CFR 25.149. This information is used by the Commission to license commercial satellite services in the United States. Without the collection of information that would result from these final rules, the Commission would not have the necessary information to grant entities the authority to operate commercial satellite stations and provide telecommunications services to consumers. Additionally, American consumers would be adversely impacted by the lack of telecommunications services.

OMB Control No.: 3060–1007.

Expiration Date: 7/31/2010.

Title: Streamlining and Other Revisions of Part 25 of the Commission's Rules.

Form No.: N/A.

Estimated Annual Burden: 28 respondents; 28 responses; 9,688 total annual hours; 1 hour estimated time per response.

Needs and Uses: This collection is used by the Commission staff in carrying out its duties concerning satellite communications as required by Section 301, 308, 309 and 310 of the Communications Act, 47 U.S.C. 301, 308, 309, 310. This collection is also used by the Commission staff in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement. The information collection requirements accounted for in this collection are necessary to determine the technical, legal and financial qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. All satellite applications filed under 47 CFR part 25, whether by U.S. or non-U.S. entities, and regardless of spectrum used, are included in this collection. If the data contained in this collection were collected less frequently or not filed in conjunction with our rules, then the Commission would not be able to streamline its satellite license modification rules and also carry-out its mandate as required by statute. As a result, licensees would not be able to provide services to the public as effectively as they could under the streamlined satellite license modification rules. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

OMB Control No.: 3060–1054.

Expiration Date: 2/28/2010.

Title: Application for Renewal of an International Broadcast Station License.

Form No.: FCC Form 422–IB.

Estimated Annual Burden: 10 respondents; 60 responses; 60 total annual burden hours; 6 hours per response.

Needs and Uses: The Federal Communications Commission collects information under *OMB Control No.* 3060–1054 pursuant to the rules set forth in 47 CFR 73.702, 73.731, 73.732, 73.733, 73.751, 73.753, 73.754, 73.755, 73.759, 73.760, 73.765, 73.781 and 73.782 in order to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

OMB Control No.: 3060–1055.

Expiration Date: 2/28/2010.

Title: Application for Permit to Deliver Programs to Foreign Broadcast Stations.

Form No.: FCC Form 423–IB.

Estimated Annual Burden: 30 respondents; 240 responses; 240 annual hours, 8 hours per respondent.

Needs and Uses: The information collected pursuant to the rules set forth in 47 CFR 73.1001, 73.1010, 73.1015, 73.1020, 73.1120, 73.1125, 73.1150, 73.1201, 73.1202, 73.1210, 73.1212, 73.1213, 73.1215 and 73.350 are applicable to all AM, FM, TV and Class A TV broadcast services, including both commercial and noncommercial stations. If this information were not collected from the respondents on the application form, the Commission would not be able to ensure that commercial and noncommercial radio and television broadcasters meet the legal and technical requirements essential to operate radio and TV stations and to prevent harmful interference among broadcast stations and other telecommunications facilities. Pursuant to 47 CFR 73.3580, broadcasters must keep the public informed of a station's filing of an application or amendment by advertisements in local newspapers. The public is kept abreast of the stations' existence in a local area or plans to locate in a specific local area through such advertisements. Section 73.3580 also requires that certain applications be maintained on file for public inspection at a stated address in the community in which the station is located or is proposed to be located. If the Commission did not collect this information, it would not be able to ensure that broadcast licensees keep the public informed of the existence of broadcast stations in the local area or plans to establish broadcast stations in the local area as well as other pertinent information of interest to the public. Furthermore, the Commission would not be able to ascertain whether the commercial and noncommercial broadcast stations meet various technical and/or legal requirements that are critical to the operations of a broadcast station and to prevent harmful interference to other broadcast stations or telecommunications facilities.

OMB Control No.: 3060–1056.

Expiration Date: 2/28/2010.

Title: Application for an International Broadcast Station License.

Form No.: FCC Form 421–IB.

Estimated Annual Burden: 10 respondents; 120 responses; 120 total annual hours; 12 hours per response.

Needs and Uses: The Federal Communications Commission collects information pursuant to the rules set forth in 47 CFR 73.702, 73.731, 73.732, 73.733, 73.751, 73.753, 73.754, 73.755, 73.759, 73.760, 73.765, 73.781 and 73.782. The Commission uses this information to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions.

OMB Control No.: 3060–1057.

Expiration Date: 2/28/2010.

Title: Application for Authority to Construct or Make Changes in an International Broadcast Station.

Form No.: FCC Form 420–IB.

Estimated Annual Burden: 10 respondents; 160 responses; 160 total annual hours; 16 hours per response.

Needs and Uses: The Federal Communications Commission collects information pursuant to the rules set forth in 47 CFR 73.702, 73.731, 73.732, 73.733, 73.751, 73.753, 73.754, 73.755, 73.759, 73.760, 73.765, 73.781 and 73.782. The Commission uses this information to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions.

OMB Control No.: 3060–1063.

Expiration Date: 3/31/2010.

Title: Global Mobile Personal Communications by Satellite (GMPCS) Authorization, Marketing and Importation Rules.

Form No.: N/A.

Estimated Annual Burden: 19 respondents; 19 responses; 483 annual burden hours, 24 hours per response.

Needs and Uses: The rule sections applicable to this information collection are Title 47 CFR 1.1307, 2.1033, 2.1204, 25.118, 25.129, 25.132, 25.135, 25.136, 25.138, and 25.216. The Commission requires interested parties to obtain equipment authorization pursuant to the certification procedure in Part 2 of the Commission's rules. The Part 2 certification procedure requires submission of an application (FCC Form 731) and exhibits to the Commission, including test data showing that a representative sample unit of the devices that would be covered by the certification, meets the Commission's applicable technical requirements. The requirement applies to devices imported, sold, leased, shipped, or distributed after November 19, 2004. This information collection includes a certification requirement for portable GMPCS transceivers to prevent interference, reduce radio-frequency (''RF'') radiation exposure risk, and make regulatory treatment of portable GMPCS transceivers consistent with treatment of similar terrestrial wireless devices, such as cellular phones. The Commission is requiring that applicants obtain authorization for the equipment by submitting an application and exhibits, including test data. If the Commission did not obtain such information, it would not be able to ascertain whether the equipment meets the FCC's technical standards for operation in the United States. Furthermore, the data is required to ensure that the equipment will not cause catastrophic interference to other telecommunications services that may impact the health and safety of American citizens.

OMB Control No.: 3060–1066.

Expiration Date: 3/31/2010.

Title: Renewal of Application for Satellite Space and Earth Station Authorization.

Form No.: FCC Form 312–R.

Estimated Annual Burden: 6 respondents; 6 responses; 2,000 annual burden hours, 12 hours per response.

Needs and Uses: Pursuant to 47 CFR 25.121(e) of the Federal Communications Commission's rules, earth station applicants must file the FCC Form 312-R with the Commission in the International Bureau Filing System (IBFS) to request renewals of their licenses. This collection is used by the Commission staff in carrying out its duties concerning satellite communications as required by Section 301, 308, 309 and 310 of the Communications Act, 47 U.S.C. 301, 308, 309, 310. This collection is also used by the Commission staff in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement. Without this collection of information, applicants and licensees would not be able to obtain the authorization necessary to provide telecommunications services; the Commission would not be able to carry-out its mandate as required by statute; and applicants and licensees would not be able to provide services to the public effectively. The Commission would not be able to determine whether the authorization is in the public interest, convenience and necessity.

OMB Control No.: 3060–1067.

Expiration Date: 3/31/2010.

Title: Qualification Questions.

Form No.: FCC Form 312–EZ.

Estimated Annual Burden: 3,872 respondents; 3,872 responses; 38,720 annual burden hours, 10 hours per response.

Needs and Uses: Routine conventional C-band and Ku-band earth station applications eligible for ''auto-grant'' procedure (non-common carriers) must file the FCC Form 312–EZ with the Commission pursuant to 47 CFR 25.115. This collection is used by the Commission staff in carrying out its duties concerning satellite communications as required by Section 301, 308, 309 and 310 of the Communications Act, 47 U.S.C. 301, 308, 309, 310. This collection is also used by the Commission staff in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity. All ''routine'' earth station applications that are consistent with all the technical requirements in part 25 applicable to earth stations are included in this collection. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the U.S. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

OMB Control No.: 3060–1095.

Expiration Date: 12/31/2009.

Title: Surrenders of Authorizations for International Carrier, Space Station and Earth Station Licensees.

Form No.: N/A.

Estimated Annual Burden: 306 respondents; 306 responses; 306 total annual hours; 1 hour per response.

Needs and Uses: Licensees file surrenders of authorizations with the Commission on a voluntary basis. (Note: There are no specific Commission rules pertaining to surrenders of authorizations because it is voluntary on the part of the licensee). This information is used by Commission staff to issue Public Notices to announce the surrenders of authorization to the general public. The Commission's release of Public Notices is critical to keeping the general public abreast of the licensees' discontinuance of telecommunications services. Without this collection of information, licensees would be required to submit surrenders of authorizations to the Commission by letter which is more time consuming than submitting such requests to the Commission electronically. In addition, Commission staff would spend an extensive amount of time processing surrenders of authorizations received by letter. The collection of information saves time for both licensees and Commission staff since they are received in the International Bureau Filing System (IBFS) electronically and include only the information that is essential to process the requests in a timely manner. Furthermore, the e-filing module expedites the Commission staff's announcement of surrenders of authorizations via Public Notice.

OMB Control No.: 3060–1108.

Expiration Date: 9/30/2010.

Title: Consummation of Assignments and Transfers of Control of Authorization.

Form No.: N/A.

Estimated Annual Burden: 589 respondents; 589 responses; 589 total hours; 1 hour per respondent.

Needs and Uses: Applicants utilize the International Bureau Filing System (IBFS) to inform the Commission of consummations of assignments and transfers of control of authorization for international telecommunications and satellite services, such as International High Frequency (IHF), Section 214 Applications (ITC), Satellite Space Stations (SAT), Submarine Cable Landing Licenses (SCL) and Satellite Earth Station (SES) licenses. The Commission has authority for this information collection pursuant to 47 U.S.C. 154(i) and 47 CFR Sections 1.767, 25.119, 63.24(e)(4), 73.3540 and 73.3541. The information collections are necessary for the Commission to maintain effective oversight of U.S. providers of international telecommunications services that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign entities that have market power. Without this collection of information, the Commission would not have critical information such as a change in a controlling interest in the ownership of the licensee. The Commission would not be able to carry out its duties under the Communications Act and to determine the qualifications of applicants to provide international telecommunications service, including applicants that are affiliated with foreign entities, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–21514 Filed 10–31–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 and CC Docket No. 92–105; DA 07–4178]

IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons With Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; The Use of N11 Codes and Other Abbreviated Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks comment on petitions filed by the Voice on the Net (VON) Coalition, the United States Telecom Association (USTelecom), and Hamilton Telephone Company (Hamilton) seeking a stay or waiver of certain aspects of the Commission's Voice Over Internet Protocol (VoIP) Telecommunications Relay Services (TRS) Order (*VoIP TRS Order*). In particular, the Commission seeks comment on technical solutions to the ability of interconnected VoIP providers to route all 711 calls to an appropriate relay center and to the ability of a relay center to identify the appropriate public safety answering point (PSAP) to call when receiving an emergency call via 711 abbreviated TRS dialing access and an interconnected VoIP service. The Commission expects that interested parties will work together to achieve technical solutions that will enable emergency 711 calls placed through interconnected VoIP providers to be handled in accordance with the Commission's emergency call handling procedures.

DATES: Comments are due on or before December 3, 2007. Reply comments are due on or before December 17, 2007.

ADDRESSES: Interested parties may submit comments and reply comments identified by [WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 and CC Docket No. 92–105], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting electronic filings.
- *Federal Communications Commission's Electronic Comment Filing System (ECFS): http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting electronic filings.
- By filing paper copies.
- For electronic filers through ECFS or the Federal eRulemaking Portal, because multiple docket numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments to each docket number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket numbers, which in this instance are [WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 and CC Docket No. 92–105]. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Because more than one docket number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket 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 (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Parties who choose to file by paper should also submit their filings on compact disc. The compact disc should be submitted, along with three paper copies, to: Dana Wilson, Consumer and Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3–C418, Washington, DC 20554. The compact disc should be formatted in an IBM compatible format using Word 2003 or a compatible software; accompanied by a cover letter; submitted in ''read only'' mode; and clearly labeled with the commenter's name, proceeding (including the docket numbers in this case [WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 and CC Docket No. 92–105]), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the compact disc. The label should also include the following phrase ''Disc Copy—Not an Original.'' Each compact disc should contain only one party's pleading, preferably in a single electronic file. In addition, paper filers must send one copy of each compact disc to the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.
- The Commission's contractor will receive hand-delivered or messenger-delivered filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location 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 mail sent by 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 should be addressed to 445 12th Street, SW., Washington, DC 20554.

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 and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document DA 07–4178 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/headlines.html.*

Document DA 07–4178 and any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, (202) 418–0270. Document DA 07–4178 and any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at the contractor's Web site, *http://www.bcpiweb.com,* or by calling (800) 378–3160. Furthermore, document DA 07–4178, any subsequently filed documents in this matter, and a copy of the underlying petitions for waiver may be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs* (insert [WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 or CC Docket No. 92–105] into the Proceeding block).

FOR FURTHER INFORMATION CONTACT: Lisa Boehley, Consumer and Governmental Affairs Bureau, Policy Division, at (202) 418–7395 (voice), or e-mail *Lisa.Boehley@fcc.gov.*

SUPPLEMENTARY INFORMATION: On June 15, 2007, the Commission released the *VoIP TRS Order,* published at 72 FR 43546, August 6, 2007, WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 and CC Docket No. 92–105, FCC 07–110. In the *VoIP TRS Order,* the Commission extended to providers of interconnected VoIP services the application of its pre-existing TRS rules under sections 225 and 255 of the Communications Act of 1934, as amended. Among other things, the *VoIP TRS Order* required interconnected VoIP providers to offer 711 abbreviated dialing access to TRS ''to ensure that TRS calls can be made from any telephone, anywhere in the United States, and that such calls will be properly routed to the appropriate relay center.''

On September 14, 2007, the VON Coalition filed a ''Motion for Stay or Waiver,'' asking the Commission to stay the effective date of the TRS requirements, including the 711 dialing requirement, as applied to interconnected VoIP providers or, in the alternative, to waive those requirements.

On September 21, 2007, USTelecom filed a petition requesting a two-year waiver for interconnected VoIP providers of the requirement that they route emergency 711 calls to a TRS provider capable of determining the appropriate PSAP to call to respond to an emergency.

On September 21, 2007, Hamilton—a provider of traditional TRS services in various states—filed a request for waiver of the TRS emergency call handling requirements, as applied to traditional TRS providers' handling of 711 calls that originate on interconnected VoIP networks.

This is a summary of the Commission's public notice in document DA 07–4178, IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; The Use of N11 Codes and other Abbreviated Dialing Arrangements, WC Docket No. 04–36, CG Docket No. 03–123, WT Docket No. 96–198 and CC Docket No. 92–105, adopted October 9, 2007, released October 9, 2007. Document DA 07–4178 also contains a separate order granting in part and denying in part the petitions for stay or waiver filed by the VON Coalition, USTelecom, and Hamilton.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this matter shall be treated as a ''permit-but-disclose'' proceeding in which *ex parte* communications are subject to disclosure.

Synopsis

In document DA 07–4178, the Commission seeks comment on the petitions for stay or waiver filed by the VON Coalition, USTelecom, and Hamilton. In particular, the Commission seeks comment on technical solutions to the ability of interconnected VoIP providers to route all 711 calls to an appropriate relay center—defined as the relay center(s) serving the state in which the caller is geographically located, or the relay center(s) corresponding to the caller's last registered address—and to the ability of a relay center to identify the appropriate PSAP to call when receiving an emergency call via 711 and an interconnected VoIP service.

The Commission expects that interconnected VoIP providers, relay service providers, and members of the industry and community will work closely together to achieve a solution as expeditiously as possible that will enable emergency 711 calls placed through interconnected VoIP providers to be handled in accordance with the Commission's emergency call handling procedures.

Federal Communications Commission.

Catherine W. Seidel,

Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. E7–21523 Filed 10–31–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, November 5, 2007, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(4), (c)(6), (c)(8), and (9)(A)(ii) of Title 5, United States Code, to consider matters relating to the Corporation's supervisory and corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7122.

Dated: October 29, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–21545 Filed 10–31–07; 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. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 2007.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First National Bancshares, Inc., Spartanburg, South Carolina; to acquire 100 percent of the voting securities of Carolina National Corporation, and thereby indirectly acquire voting shares of Carolina National Bank and Trust

Company, both of Columbia, South Carolina.

Board of Governors of the Federal Reserve System, October 29, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–21502 Filed 10–31–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, November 5, 2007.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 29, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–5459 Filed 10–30–07; 1:05 pm]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

[File No. 061 0281]

Owens Corning; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 26, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Owens Corning, File No. 061 0281,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Wallace W. Easterling (202) 326-2936, Bureau of Competition, Room NJ-6264, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 26, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/10/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order from Owens Corning (''Respondent''). The Consent Agreement is intended to resolve anticompetitive effects stemming from Owens Corning's proposed acquisition of certain glass fiber reinforcements and composite fabric assets from Compagnie de Saint Gobain (''Saint Gobain). The Consent Agreement includes a proposed Decision and Order which requires Respondent Owens Corning to divest its North American Continuous Filament Mat (''CFM'') Business, which includes the CFM production facility in Huntingdon, Pennsylvania, the Marbles Furnace in Anderson, South Carolina, which supplies the Huntingdon facility, and related technology and other assets used in the CFM business. The proposed Decision and Order also requires the licensing of all Owens Corning intellectual property related to the production of CFM and certain CFM furnace technology.

Owens Corning and Saint Gobain originally planned to combine their respective glass fiber reinforcement businesses in a new entity to be called Owens Corning Vetrotex Reinforcements. The new entity was to be owned 60 percent by Owens Corning and 40 percent by Saint Gobain. In response to antitrust concerns, the parties restructured the transaction and entered into an acquisition agreement whereby Owens Corning will acquire Saint Gobain's glass fiber reinforcements and composite fabric business assets worldwide with several important exclusions. Owens Corning will not acquire Saint Gobain's glass fiber reinforcements assets located in the United States. Additionally, certain assets located in Europe will be divested pursuant to an agreement entered into between the parties and the European Commission. However, under the proposed acquisition, Owens Corning will still acquire Saint Gobain's assets used in the design, manufacture, and sale of CFM, a unique glass fiber reinforcement product. Saint Gobain competes in CFM in the United States using CFM produced at its facility in Besana, Italy. The proposed Consent Agreement and Decision and Order are designed to address competition concerns in the CFM market.

The Decision and Order calls for divestiture of Owens Corning's CFM Business to AGY Holding Company (''AGY''), or another Commission-approved buyer in the event that AGY is determined not to be acceptable. The Consent Agreement, if finally accepted by the Commission, would settle charges that the proposed acquisition may substantially lessen competition in the market for CFM. The Commission has reason to believe that Respondent's proposed acquisition would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

II. The Proposed Complaint

According to the Commission's proposed complaint, the relevant product market in which to analyze the effects of Saint Gobain's sale of assets to Owens Corning is the market for the development, manufacture, and sale of CFM and related technology. CFM is an input in the production of non-electrical laminate, marine parts and accessories, and other products where its strength and other desirable characteristics make it the most cost effective material to use. The relevant product is used to increase mechanical performance, such as stiffness and strength, as well as chemical resistance. The relevant geographic market is North America, including imports.

The proposed complaint alleges that the market for CFM is highly concentrated and that Saint Gobain and Owens Corning have been the primary competitors in these markets for many years. According to the proposed complaint, Owens Corning and Saint Gobain account for more than 90 percent of the CFM sold in North America. The only other substantial supplier is PPG Industries, a firm that accounted for less than 10 percent of the CFM sold in the United States last year.

The proposed complaint alleges that the proposed acquisition would reduce competition by eliminating direct competition between these two companies. The proposed complaint further alleges that entry into the relevant market would not be timely, likely, or sufficient to deter or offset the proposed joint venture's adverse competitive effects.

III. Terms of the Proposed Order

Under the proposed Decision and Order, Owens Corning will divest its CFM business to AGY within ten (10) days after acquiring certain worldwide glass fiber reinforcements and composite fabric assets from Saint Gobain. AGY, based in Aiken, South Carolina, develops, manufactures, and markets a wide range of glass fiber yarns and reinforcement materials. As an existing participant in the glass fiber reinforcement business, AGY is well-positioned to compete effectively in the CFM business.

The proposed Decision and Order requires Owens Corning to divest its Huntingdon Facility that produces CFM. In addition, Owens Corning is required to divest the Marbles Furnace located in Anderson, South Carolina, that currently supplies the Huntingdon Facility with essential glass fiber marbles used in the production of CFM at Huntingdon. Also, Owens Corning is required to grant AGY two licenses. The first license is to Owens Corning intellectual property, wherever located, related to the production, marketing, and distribution of CFM. The second license is to Owens Corning furnace technology used in the Owens Corning Guelph and Owens Corning Battice facilities related to CFM. The purpose of the divestiture and licensing is to give AGY all assets and know-how necessary for the production and sale CFM products.

The proposed Decision and Order also allows for the parties to enter into transition agreements for the short term provision of services, including an agreement for the supply of the raw materials for the production of Marbles. Moreover, the proposed Decision and Order precludes Owens Corning and Saint Gobain from entering into any agreement that would impair the value of the assets retained by Saint Gobain.

The proposed Decision and Order contains a provision requiring prior notice for the acquisition of certain CFM assets.

IV. Opportunity for Public Comment

The proposed Decision and Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order. By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–21509 Filed 10–31–07: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Conference Call

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee conference call.

Name: National Committee on Vital and Health Statistics (NCVHS), Ad Hoc Workgroup on Secondary Uses of Health Data.

Time and Date: October 31, 2007, 2 p.m.–5 p.m. EST.

Place: Conference Call, Toll Free—1–888–324–2603, Leader's Name—Cynthia Sidney, Pass code—NCVHS. For security reasons, the pass code above and the leader's name will be required to join the call.

Status: Open.

Purpose: The purpose of the conference call is to provide an opportunity for public comment on a ''pre-decisional draft'' of the NCVHS report: Enhanced Protections for Uses of Health Data: A Framework for ''Secondary Uses'' of Electronically Collected and Transmitted Health Data. The draft report may be found at *http://www.ncvhs.hhs.gov/.*

Contact Person For More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Debbie M. Jackson, Senior Program Analyst, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2339, Hyattsville, MD 20782, (301) 458–4614, *djackson@cdc.gov;* or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site *http://www.ncvhs.hhs.gov/.*

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: October 22, 2007.

James Scanlon,

Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 07–5434 Filed 10–31–07; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Availability of Draft Guidance on Allocating and Targeting Pandemic Influenza Vaccine

AGENCY: Office of the Secretary, Health and Human Services.

ACTION: Notice of availability.

SUMMARY: The Department of Health and Human Services (HHS) and the Department of Homeland Security (DHS) are seeking public comment on the draft Guidance on Allocating and Targeting Pandemic Influenza Vaccine. The draft Guidance is now available on the HHS Web site.

DATES: Submit comments on or before December 31, 2007.

Instructions for Submitting Comments: Electronic responses are preferred and may be addressed to *Panfluvaccine@hhs.gov*. Written responses should be addressed to U.S. Department of Health and Human Services, Room 434E, 200 Independence Avenue, SW., Washington, DC 20201, Attention: Pandemic Influenza Vaccine Prioritization Guidance Comments. A copy of the Notice and the full text of the draft Guidance are also available on the PandemicFlu.Gov Web site at *http://www.pandemicflu.gov/vaccine/prioritization.html* and at *http://www.aspe.hhs.gov/panflu/vaccinepriorities.html*. Please follow instructions for submitting responses.

The submission of comments in response to this notice should not exceed 25 pages, not including appendices and supplemental documents. Any information you submit will be made public. Consequently, do not send proprietary, commercial, financial, business confidential, trade secret, or personal information that you do not wish to be made public.

Public Access: Responses to this notice will be available to the public in the HHS Public Reading Room, 200 Independence Avenue, SW., Washington, DC 20201. Please call (202) 690–7453 between 9 a.m. and 5 p.m. to arrange access.

FOR FURTHER INFORMATION CONTACT: Hui-Hsing Wong, M.D., Office of the Assistant Secretary for Planning and Evaluation, (202) 205–0519.

SUPPLEMENTARY INFORMATION: Influenza viruses have threatened the health of animal and human populations for centuries. A pandemic occurs when a novel strain of influenza virus emerges that has the ability to infect and be passed between humans. Because humans have little immunity to the new virus, a worldwide epidemic, or pandemic, can ensue.

Three human influenza pandemics occurred in the 20th century. In the U.S., each pandemic led to illness in approximately 30 percent of the population and death in between 2 in 100 and 2 in 1000 of those infected. It is projected that a modern pandemic, absent effective control measures, could result in the death of 200,000 to 2 million people in the U.S. alone.

A critical part of the United States Government (USG) strategy to control the spread of a pandemic and reduce its health and societal impact is through the use of vaccines. The USG is working toward a goal of expanding domestic influenza surge capacity to produce pandemic influenza vaccines for the entire population within six months of a pandemic declaration. However, at the beginning of a pandemic, the limited supply of existing pandemic influenza vaccines will require that their distribution and administration be prioritized.

Accordingly, the Homeland Security Council *Implementation Plan for the National Strategy for Pandemic Influenza* required the Department of Health and Human Services (HHS) in coordination with the Department of Homeland Security (DHS) to convene a federal interagency working group to draft a guidance to assist State and local governments, communities, tribal and territorial governments, and the private sector in planning an effective and consistent pandemic response. The USG embarked on a rigorous and collaborative process to seek input from all interested parties in developing a strategy to emerge from a pandemic with minimal levels of illness, death, and disruption to our society and economy.

The draft Guidance on Allocating and Targeting Pandemic Influenza Vaccine outlines the USG's goal of targeting the early production of pandemic vaccines to reduce the impact on health and minimize disruption to society and the economy and describes the scientific and ethical framework for how this guidance was developed. As part of the guidance, a tiered prioritization for vaccines in severe pandemics is being proposed with the following objectives considered to be the most important: (1) Protect those who are essential to the pandemic response and provide care for persons who are ill; (2) protect those who maintain essential community services; (3) protecting children; and (4) protect workers who are at greater risk of infection as a result of their job. Protecting those who maintain homeland and national security was also considered a significant Federal objective. The ultimate goal of pandemic vaccination is to provide vaccines to all persons in the United States who choose to be vaccinated by 6 months after the declaration of a pandemic.

With this notice, the USG requests comment from the public and interested stakeholders on the draft Guidance on Allocating and Targeting Pandemic Influenza Vaccine.

Specifically, the USG invites comments on the following:

The framework for establishing pandemic influenza vaccine priorities, including the—

(1) approach for defining:

a. Target groups,

b. The clusters of target groups in the categories,

c. The levels within categories,

d. The tiers across categories.

(2) The extent to which the prioritization guidance addresses the stated program objectives.

(3) The extent to which the guidance is likely to lead to fair and ethical allocation and targeting of pandemic influenza vaccine across the population.

The text of the draft guidance is available in html and pdf formats through the *PandemicFlu.Gov* Web site at *http://www.pandemicflu.gov/vaccine/prioritization.html* and the HHS Web site at *http://www.aspe.hhs.gov/panflu/*

vaccinepriorities.html. For those who may not have Internet access, a hard copy can be requested from the point of contact, Hui-Hsing Wong, Office of the Assistant Secretary for Planning and Evaluation (202) 205-0519.

Date: October 24, 2007.

RADM W. Craig Vanderwagen,

Assistant Secretary for Preparedness and Response.

[FR Doc. 07–5435 Filed 10–31–07; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

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:

Time and Date: 11 a.m.–4 p.m., November 27, 2007.

Place: Audio Conference Call via Federal Telecommunications System Conferencing. The USA toll free dial in number is 1–866–659–0537 with a pass code of 9933701.

Status: Open to the public, but without a public comment period.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, most recently, August 3, 2007, and will expire on August 3, 2009.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the conference call includes: FY 2008 New Site Profiles and New Procedures for SC&A; Procedures to Select New Contractor for ABRWH; Work Group Updates; Sandia-Livermore Update and Future Activities; Chapman Valve Reports from DOE and DOL; Dow Chemical Report from DOE; SEC and Site Profile Matrices Update; Subcommittee for Dose Reconstruction Reviews Report of the 4th and 5th Sets of Individual Dose Reconstructions, and the Summary Report on the First 100 Cases; Rocky Flats Update; Discussion of Board Procedures; Status of and Plans for Future Board Activities; and Board Working Time.

The agenda is subject to change as priorities dictate. Because there is not a public comment period, written comments may be submitted. Any written comments received will be included in the official record of the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephone (513) 533–6825, Fax (513) 533–6826.

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 CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 25, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E7–21505 Filed 10–31–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Request for Nominations

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill seven (7) upcoming vacancies on the Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Authority: 42 U.S.C. 294f, Section 756 of the PHS Act, as amended. The Advisory Committee is governed by provisions of Public Law (Pub. L.) 92–463, as amended (5 U.S.C. Appendix 2) which sets forth standards for the formation and use of advisory committees.

DATES: The Agency must receive nominations on or before December 31, 2007.

ADDRESSES: All nominations are to be submitted by mail to Louis D. Coccodrilli, Designated Federal Official, ACICBL, Bureau of Health Professions (BHPr), HRSA, Parklawn Building, Room 9–05, 5600 Fishers Lane; Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adriana Guerra, Public Health Fellow, Division of Medicine and Dentistry, by e-mail *aguerra@hrsa.gov* or telephone, (301) 443–6194.

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACICBL, the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), and section 2119 of the Act, 42 U.S.C. 00aa–19, as added by Public Law 99–660 and amended, HRSA is requesting nominations for seven (7) voting members.

The ACICBL provides advice and recommendations to the Secretary and to the Congress concerning policy, program development and other matters of significance related to interdisciplinary, community-based training grant programs authorized under sections 751–756, Title VII, Part D of the Public Health Service Act. The ACICBL prepares an annual report describing the activities conducted during the fiscal year, identifying findings and developing recommendations to enhance Title VII Interdisciplinary, Community-Based Training Grant Programs. The Annual Report is submitted to the Secretary of the U.S. Department of Health and Human Services, and ranking members of the Committee on Health, Education, Labor and Pensions of the Senate, and the Committee on Energy and Commerce of the House of Representatives.

The Department of Health and Human Services is requesting a total of seven (7) nominations for voting members of the ACICBL from schools that have administered or are currently administering awards from the following programs: Area Health Education Centers (AHECs)—1 nominee, Allied Health—1 nominee, Geriatric Education and Training Programs—1 nominee, Health Education and Training Centers (HETCs)—1 nominee, and Quentin N. Burdick Program for Rural Interdisciplinary Training—1 nominee. Nominations are also requested for two student, resident, and/or fellow representatives.

Interested individuals may nominate multiple qualified professionals for membership to the ACICBL to allow the Secretary to choose from a highly qualified list of potential candidates. Nominees willing to serve as members of the ACICBL should have no appearance of a conflict of interest that would preclude their participation. Potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit an evaluation of possible sources of conflicts of interest. In addition, a curriculum vitae and a statement of interest will be required of the nominee to support experience working with Title VII Interdisciplinary, Community-Based Training Grant Programs, expertise in the field, and personal desire in participating on a National Advisory Committee. Qualified candidates will be invited to serve a one-, two-, or three-year term. All nominations must be received no later than December 31, 2007.

The legislation governing this Committee requires a fair balance of health professionals who represent the general population with regard to a broad geographic distribution and an evenness of urban and rural areas, along with professionals who are women and minorities. As such, the pool of appropriately qualified nominations should reflect these requirements to the degree possible.

Dated: October 25, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–21521 Filed 10–31–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Revisions to the Program Guidance for the Training in Primary Care Medicine and Dentistry Program

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: HRSA announces a revision to the program guidance for the Training in Primary Care Medicine and Dentistry Program posted on August 23, 2007 on Grants.gov, *http://www.grants.gov.* The guidance includes information for the following competitive funding opportunities:

HRSA–08–032 Academic Administrative Units; HRSA–08–035 Physician Faculty Development; HRSA–08–037 Predoctoral Training; HRSA–08–039 Physician Assistant Training; HRSA–08–042 Residency Training; and HRSA–08–044 Residency Training in General and Pediatric Dentistry. This revision only affects the Physician Faculty Development program, HRSA–08–035. A revised guidance has been posted on Grants.gov. Specifically, the additional language included in the guidance is presented below:

Primary Care Clinician Research Fellowship—This track provides fellowships that focus on development of primary care research investigators.

Duration—Fellowships will last 2 to 3 years.

Features—Applications should include a rigorous research/training track which is offered at an academic health science center. Advanced degrees (e.g., M.P.H., M.P.A.) are a desirable option. Desirable candidates include multidisciplinary physician faculty and fellows. Research areas should be consistent with the scope and content of primary care practice and education, and may include such areas as the linkage between Healthy People 2010 and health disparities, community and practice-based research, patient safety, quality improvement, professionalism, health literacy, and cultural competency.

Stipend Level—Enhanced stipend level is equivalent to National Research Service Award (NRSA) stipends, which range from $36,996 for individuals entering immediately following receipt of their doctoral degree to $51,036 for individuals with 7 years or more of relevant experience and/or training. A table of stipend levels is provided in this guidance. Supplementation of the stipends is allowable and encouraged; however, the combination of stipend and supplementation may not exceed the full-time salary of comparable multidisciplinary physician faculty at the applicant's institution.

Time Requirement—Pro-rated stipends are not available. For applicants requesting full stipends, 60 percent of a Fellow's time for 24- to 36 months of fellowship must be devoted to formal research training. The remaining 40 percent of time for a 24 to 36-month fellowship must be spent in activities consistent with the roles of academic faculty (clinical practice, teaching, and/or administration).

FOR FURTHER INFORMATION CONTACT: Brenda L. Williamson, MA, CTHE, Chief, Primary Care Medical Education Branch, Division of Medicine and Dentistry, Bureau of Health Professions, HRSA, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1467.

Dated: October 25, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–21520 Filed 10–31–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; A Process Evaluation of the NIH Director's Pioneer Award (NDPA) Program

Summary: 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 Office of the Director, the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: A Process Evaluation of the NIH Director's Pioneer Award (NDPA) Program. *Type of Information Collection Request:* Extension of a currently approved collection. *Need and Use of Information Collection:* This study will assess the NDPA Program operations and the outputs of the identification, evaluation and selection process. The primary objectives of the study are to: (1) Assess the NDPA award selection process; (2) determine if the program was implemented as planned; and (3) determine if the process was conducted in accordance with the overall mission of the NDPA program. The findings will provide valuable information concerning: (1) The characteristics of applicants and reviewers; (2) the criteria used to evaluate and select awardees; and (3) aspects of the process that could be revised or improved.

Frequency of Response: Once. *Affected Public:* none. *Type of Respondents:* Applicants, Reviewers and Panelists, Liaisons. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. *Frequency of Response:* Once. *Affected Public:* none. *Type of Respondents:* Applicants, Reviewers and Panelists. *Estimated Number of Respondents:* 710; *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours Per Response:* .25 (15 minutes), and *Estimated Total Annual Burden Hours Requested:* 177.50 and the annualized cost to respondents is estimated at $9,662.50. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. Table l and Table 2, respectively, present data concerning the burden hours and cost burdens for this data collection.

TABLE 1.—ANNUALIZED ESTIMATE OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time for response (hr)	Total hour burden *
Applicants	600	1	.25	150
Extramural evaluators	110	1	.25	2
Total	710	1	.25	177.50

* Total Burden = *N* Respondents*Response Frequency*minutes to complete/60.

TABLE 2.—ANNUALIZED COST TO RESPONDENTS

Type of respondents	Number of respondents	Response frequency	Approx. hourly wage rate	Total respondent cost **
Applicants	1200	1	$55.00	$8,250
Extramural evaluators	220	1	55.00	1,512.50
Total	710	1	55.00	9,662.50

** Total Respondent Cost = *N* Respondents*Response Frequency*minutes to complete/60* hourly rate.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information Contact: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact G. Stephane Philogene, PhD, Assistant Director for Policy and Planning, Office of Behavioral and Social Sciences Research, National Institutes of Health, 31 Center Drive, Building 31, Room B2–B37, Bethesda, MD 20892, or call non-toll-free number 301–402–3902, or E-mail your request, including your address to: *philoges@od.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 24, 2007.

G. Stephane Philogene,

Assistant Director for Policy and Planning, Office of Behavioral and Social Sciences Research, National Institutes of Health.

[FR Doc. E7–21474 Filed 10–31–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission of OMB Review; Comment Request; Drug Accountability Record (NCI)

Summary: In compliance with the requirement of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Cancer Institute (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collected below. This proposed information collection was previously published in the **Federal Register** on August 13, 2007, Vol. 72, No. 55, Page 45251 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after December 1, 2007, unless it displays a valid OMB control number.

Proposed Collection: Title: Drug Accountability Record (NCI) (Form NIH 2564). *Type of Information Collection Request:* Extension, with no changes OMB No. 0925–0240. *Expiration Date:* 11/30/07. *Need and Use of Information Collection:* Food and Drug Administration (FDA) regulations require investigators to establish a record of the receipt, use and disposition of all investigational agents. The National Cancer Institute, (NCI), as a sponsor of investigational drug trials, has the responsibility to assure the FDA that investigators in its clinical trials program are maintaining systems for drug accountability. In order to fulfill these requirements, a standard Investigational Drug Accountability Report Form (NIH 2564) was designed to account for drug inventories and usage by protocols. The data obtained from the drug accountability record will be used to keep track of the dispensing of investigational anticancer agents to patients. It is used by NCI management to ensure that investigational drug supplies are not diverted for inappropriate protocol or patient use. The information is also compared to patient flow sheets (protocol reporting forms) during site visits conducted for each investigator once every three years. All comparisons are done with the intention of ensuring protocol, patient and drug compliance for patient and drug compliance for patient safety and protections.

Frequency of Response: Daily.

Affected Public: State or local governments, businesses or other for-profit. Federal agencies or employees, non-profit institutions, and small business or organizations.

Type of Respondents: Investigators, pharmacist, nurses, pharmacy technicians, data manager. The annual reporting burden is divided into two major areas. These are the audits of Drug Accountability Forms by Government and its contractors and the use of the forms by clinical research sites. The burden is as follows:

Federal Burden: 1700 audits are conducted of clinical research sites, a minimum of three Drug Accountability Forms are reviewed at the audit. Each form requires ½ hour to review.

Number of Respondents: 1700.

Number of Responses per Respondent: 3.

Average Burden per Response: 0.5 hours.

Annual Burden Hours: 2,250 hours.

Clinical Trial Site Burden: The annual respondents' burden for record keeping is estimated to require 6,240 hours. The record keeping burden represents an average time required for multiple entries (6 minutes or 0.1 hour per entry) on the drug accountability form, the average number of forms maintained by each record keeper and the number of record keepers.

Drug Accountability Forms

Number of Record Keepers: 3990.

Number of Responses per Respondent: 16.

Average Burden per Response: 0.1 (6 minutes).

Annual Burden Hours: 6,240 hours.

There are no Capital Costs, Operating Costs, and Maintenance Cost to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response times, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Charles L. Hall, Jr., Chief, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division of the Cancer Treatment and Diagnosis, and Centers, National Cancer Institute, Executive Plaza North, Room 7148, 9000 Rockville Pike, Bethesda, MD 20892 or call non-toll-free number 301–496–5725 or e-mail your request, including your address to: *Hallch@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days following the date of this publication.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E7–21475 Filed 10–31–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved collection, OMB Number 1660–0011, FEMA Form 22–13.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning an information collection system for disaster program accounts and debts receivable. The automated portion of the system is an accounts receivable system and is complimented by a manual technique that collects personal financial data directly from individual debtors by their completion of FEMA Form 22–13.

SUPPLEMENTARY INFORMATION: When errors in payments occur or reviews and audits determine that overpayments were made in various disaster entitlements, FEMA's Disaster Finance Branch (DFB), Office of the Chief Financial Officer (CFO) records pertinent receivable data, including individuals' personal data, within an automated, commercial, off-the-shelf (COTS) accounts receivable system—ACCPAC. Using various screens, a receivable is established to bill, monitor payments and produce reports. If, for lack of payment, an account receivable becomes a debt, ACCPAC continues as the receivable billing and collection system, but additional personal financial information is gathered and used to determine an ability to pay in setting requirements of installment payment agreements. DHS debt collection regulations, 6 CFR part 11, require FEMA to maintain current credit data on FEMA's debtors. To determine debtors' financial condition, this includes the individual debtors' own financial statements, executed under penalty for false claim, concerning their assets and liabilities and their income and expenses. FEMA Form 22–13 is the vehicle used to collect such data directly from the individual debtor.

FEMA uses this data to understand the debtors' financial conditions to accurately determine their ability to pay debts, to set arrangements for installment payments of debts, or to compromise/terminate debt collection. This data is also used to locate debtors' assets should it become necessary when referring debts to the Treasury Department for collection.

Collection of Information

Title: Debt Collection Financial System.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0011.

Form Numbers: FEMA Form 22–13, Debt Collection Financial Statement.

Abstract: FEMA may request debtors to provide personal financial information on FEMA Form 22–13 concerning their current financial position. With this information, FEMA evaluates whether to allow debtors to pay the FEMA debts under installment repayment agreements and if so, under what terms. FEMA also uses this data to determine whether to compromise, suspend, or completely terminate collection efforts on respondent's debts. This data is also used to locate the debtor's assets if the debts are sent for judicial enforcement.

Affected Public: Individuals or Households.

Estimated Total Annual Burden Hours: 750 hours.

ANNUAL HOUR BURDEN

Data collection activity/instrument	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (A × B)	Total annual burden hours (C × D)
FEMA Form 22–13, Debt Collection Financial Statement	1,000	1	.75	1,000	750
Total	1,000	1	.75	1,000	750

Estimated Cost: There are no costs to the respondents resulting from the collection of information since debtor-respondents provide the necessary data either from memory or from their own records that they already maintain. Cost to the respondents for the hour burdens is $10,597.50.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before December 31, 2007.

ADDRESSES: Interested persons should submit written comments to, Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Michael Komack, Policy Analyst, Financial Policy Branch, Office of the CFO, 202 646–4164 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

Dated: October 23, 2007.

John A. Sharetts-Sullivan,

Director, Office of Records Management, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–21537 Filed 10–31–07; 8:45 am]

BILLING CODE 9110–49–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3279–EM]

California; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of California (FEMA–3279–EM), dated October 23, 2007, and related determinations.

DATES: *Effective Date:* October 24, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of California is hereby amended to include Individual Assistance, limited to the Individuals and Households Program under section 408 of the Stafford Act, 42 U.S.C. 5174 for the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of October 23, 2007.

The counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura for Individual Assistance, limited to the Individuals and Households Program under section 408 of the Stafford Act, 42 U.S.C. 5174, (already designated for emergency protective measures [Category 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 Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–21536 Filed 10–31–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1729–DR]

Illinois; 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 Illinois (FEMA–1729–DR), dated September 25, 2007, and related determinations.

DATES: *Effective Date:* October 19, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 2007.

Cook, Knox, and Warren Counties for Public 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 Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–21548 Filed 10–31–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1727–DR]

Iowa; 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 Iowa (FEMA–1727–DR), dated September 14, 2007, and related determinations.

DATES: *Effective Date:* October 10, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 14, 2007.

Montgomery, Union, and Winneshiek Counties for Public 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 Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–21549 Filed 10–31–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1723–DR]

Oklahoma; 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 Oklahoma (FEMA–1723–DR), dated August 31, 2007, and related determinations.

DATES: *Effective Date:* October 19, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 31, 2007.

Garvin County for Public 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 Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–21546 Filed 10–31–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1718–DR]

Oklahoma; Amendment No. 3 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 Oklahoma (FEMA–1718–DR), dated August 24, 2007, and related determinations.

DATES: *Effective Date:* October 18, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 24, 2007.

Ellis and Latimer Counties for Public 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 Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–21547 Filed 10–31–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of Performance Review Board Appointments.

SUMMARY: This notice provides the name of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Board.

DATES: These appointments are effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Sharlyn Grigsby, Director, Office of Human Resources, Office of the Secretary, Department of the Interior, 1849 C Street, NW., Washington, D.C. 20240, Telephone Number: (202) 208–6761.

Dated: October 25, 2007.

Sharlyn A. Ungsby,

Director, Office of Human Resources.

2007 PERFORMANCE REVIEW BOARD ELIGIBLES

ABEITA, ETHEL J	DIRECTOR, OTR.
ACHTERBERG, DAVID G	DIR, SECURITY,SAFETY &LAW ENFORCEMENT.
ANSPACH, ALLEN J	REGIONAL DIRECTOR.
ARHA, KAUSHALENDRA	ASSOC SOLICITOR-IND AFF.
ARROYO, BRYAN	DEP ASST DIR-ENDG SPECIES.
ASHE, DANIEL M	FISH AND WILDLIFE ADVISOR.
BAKER, KAREN D	ASSOC DIR FOR ADMIN POLICY & SERVICES.
BATHRICK, MARK L	ASSOCIATE DIRECTOR,AVIATION MANAGEMENT.
BAYANI, THERESA WALSH	PROGRAM DIRECTOR FOR.
BECK, RICHARD T	DIRECTOR, OFFICE OF PLANNING &.
BECKMANN, DARRYL H	DIRECTOR, ADMINISTRATION.
BEIGHLEY, MARK H	DIRECTOR OFFICE OF WILDLAND.
BENNETT, ROBERT A	STATE DIRECTOR.
BHAGOWALIA, SANJEEV NMN	CHIEF INFORMATION OFFICER.
BISSON, HENRI R	DEPUTY DIRECTOR.
BLACKWELL, EDITH R	DEP ASSOC SOL-INDIAN AFFAIRS.
BLANCHARD, MARY JOSIE	DEPUTY DIRECTOR.
BLASZAK, MARCIA D	REGIONAL DIRECTOR, ALASKA REGION.
BOGERT, L. MICHAEL	COUNSELOR TO THE SECRETARY.
BOURGEOIS, DOUGLAS J	DIRECTOR, NATIONAL BUSINESS CENTER.
BRADLEY, OMAR	REGIONAL DIRECTOR.
BREECE, CHARLES E	ATTORNEY-ADVISOR (GENERAL).
BROWN, ROBERT E	ASSOC DIR FOR ADMIN AND BUDGET.
BURCH, MELVIN E	REGIONAL FIDUCIARY TRUST.
BURCKMAN, JAMES N	HUMAN RESOURCES PROJECT LEADER.
BURKS, MARIA A	EXECUTIVE DIRECTOR.
BURMAN, BRENDA W	DEPUTY ASSISTANT SECRETARY.
BURZYK, CARLA M	CHIEF, OFFICE OF BUDGET & PERFORMANCE.
BUTLER, MITCHELL J	DEPUTY ASSISTANT SECRETARY.
CARSWELL, WILLIAM J JR	DIRECTOR, NATIONAL GEOSPATIAL.
CASADEVALL, THOMAS J	REGIONAL DIRECTOR, CENTRAL REGION.
CASON, JAMES E	ASSOCIATE DEPUTY SECRETARY.
CESAR, NILES C.	REGIONAL DIRECTOR.
CHACON-ALLEVA, DOLORES L	PRESIDENT, DOI UNIVERSITY.
CHANEY, CHRISTOPHER B	DEPUTY DIRECTOR, INDIAN SERVICES.
CHICHARELLO, ELOUISE	SPECIAL ASST TO THE DIRECTOR, BIA.
CLARK, DEBBIE LYNN	DEPUTY ASSISTANT SECRETARY-MGMT.
CLARK, HORACE G	REGIONAL SOLICITOR.
COHEN, DAVID B	DEPUTY ASSISTANT SECRETARY.
COMER, ROBERT D	REGIONAL SOLICITOR.
CONTE, ANTHONY R	REGIONAL SOLICITOR.
CORDOVA-HARRISON, ELIZABE	DIR, MANAGEMENT SERVICES OFFICE.
COTTER, GLADYS A	ASSOC CHIEF BIOL FOR INFO.
CRAFF, ROBERT C	REG FIDUCIARY TRUST ADMINISTRATOR.
CRUICKSHANK, WALTER D	DEP DIR/MINERALS MGMT SERV.
DALY, ELENA C	AD, NAT'L LANDSCAPE CONSER SYS.
DANENBERGER, ELMER P	CHIEF, OFFSHORE REGULATORY.
DAVIS, MARK H	CHIEF, DIV OF BUDGET &.
DEERINWATER, DANIEL J	REGIONAL DIRECTOR.
DELAPLAINE, L. BRUCE	GENERAL COUNSEL..
DELUISE, FRANK M	DIR, NAT RES DAMAGE ASSESSMENT.
DENETT, LUCY QUERQUES	ASSOC DIR FOR MIN REV MGMT.

2007 PERFORMANCE REVIEW BOARD ELIGIBLES—Continued

DICKINSON, WILLIAM K	PARK MANAGER (SUPERINTENDENT).
DITMANSON, DALE A	PARK MANAGER-(SUPERINTENDENT).
DOHERTY, CLARE C	DEPUTY DIRECTOR, OFFICE OF BUDGET.
DOMENECH, DOUGLAS W	DEPUTY CHIEF OF STAFF.
DOUGLAS, JAMES C	ASSISTANT DIRECTOR, FIRE AND AVIATION.
DOWD, THOMAS M	DIRECTOR, OFC OF INDIAN ED PROGRAMS.
DOYLE, ROBERT E JR	DEPUTY DIRECTOR.
DUPUY, JOHN EDWARD	DEPUTY ASST INSPECTOR GENERAL.
DYER, THOMAS H	STATE DIRECTOR.
EAMES, MATTHEW C	DIRECTOR, CONGRESSIONAL AND.
EDWARDS, BERT T	EXECUTIVE DIRECTOR, OFFICE OF.
ELLER, SHARON D	DIRECTOR, OFFICE OF CIVIL RIGHTS.
ELMORE, KIMBERLY	DEP ASST INSP GEN FOR AUDITS.
ERWIN, DONNA MARIE	PRINCIPAL DEPUTY SPECIAL.
ETHRIDGE, MAX M	REG GEOGRAPHER, CENTRAL REGION.
FABER, ROBERT C	ASSOC SOL-PARKS & WILDLIFE.
FERGUSON, MICHAEL A	ASSISTANT DIRECTOR, BUSINESS.
FERRITER, OLIVIA B	DIR. CONSERVATION, PARTNERSHIPS &.
FEUERSTEIN, RANDY R	CHIEF INFORMATION OFFICER.
FINFER, LAWRENCE A	DEPUTY DIRECTOR, OFFICE OF.
FLETCHER, DANIEL L. JR	DIR-OFF OF FIN MGMT & DEP CFO.
FORREST, VICKI L	DEPUTY DIRECTOR-TRUST SERVICES.
FRAZER, GARY D	FISH & WILDLIFE ADMINISTRATOR.
FREEMAN, SHAREE M	DIRECTOR, OFC OF SELF-GOV.
GABALDON, MICHAEL R	DIR, TECHNICAL SERVICE CTR.
GARY, ARTHUR E	ASSOCIATE SOLICITOR-GENERAL LAW.
GIDNER, JEROLD L	DIRECTOR, BUREAU OF INDIAN AFFAIRS.
GOKLANY, INDUR M	MGR. SCIENCE & ENGINEERING.
GOLD, RICK L	REGIONAL DIRECTOR.
GOLL, JOHN T	REGNL DIRECTOR, ALASKA OCS RGN.
GONZALES-SCHREINER, ROSEA	DIRECTOR, PROGRAM & POLICY SERVICES.
GOULD, ROWAN W	AD-WLDLFE & SPORT FISH RES PRO.
GRAY, LORRI J	REGIONAL DIRECTOR.
GREGORY, CLAYTON JOHN	REGIONAL DIRECTOR-PACIFIC.
GRIGSBY, SHARLYN A	DIRECTOR, OFFICE OF HUMAN RESOURCES.
GUNDERSEN, LINDA C	CHIEF SCI FOR GEOLOGY.
HAMILTON, SAMUEL D	REGIONAL DIRECTOR-ATLANTA.
HANNA, JEANETTE D	REGIONAL DIRECTOR.
HARDGROVE, STEPHEN A	ASST. IG FOR INVESTIGATIONS.
HARRIS, JAMES D	ASSOC SOLICITOR-MINERAL RESOURCES.
HARTLEY, DEBORAH J	CHIEF INFORMATION OFFICER.
HASELTINE, SUSAN D	ASSOCIATE DIRECTOR FOR BIOLOGY.
HASKETT, GEOFFREY L	CHIEF, NATL WLDLFE REFUGE SYSTEM.
HASPEL, ABRAHAM E	ASSISTANT DEPUTY SECRETARY.
HATFIELD, NINA R	DAS-BUSINESS MGMT & WILDLAND FIRE.
HAZE, PAMELA K	DIRECTOR, OFFICE OF BUDGET.
HEINTZ, H. THEODORE JR	AST DIR FOR ECONOMIC ANALY.
HENNE, PAUL W	ASST DIR-BMO.
HIRSCH, ROBERT M	ASSOCIATE DIRECTOR FOR WATER.
HOFFMAN, PAUL D	DAS-PERFORMANCE, ACCOUNTABILTY.
HOWELL, MICHAEL J JR	CHIEF INFORMATION OFFICER.
HROBSKY, JON A	DEPUTY DIRECTOR FOR POLICY.
IUDICELLO, FAY S	DIRECTOR, EXEC SEC & REG AF.
JACOBSON, JULIE A	DEPUTY ASSISTANT SECRETARY.
JAEGER, ROBERT R	DIR, INDIAN LAND CONSOL CTR.
JAMES, JIM D	REGIONAL FIDUCIARY.
JARVI, CHRISTOPHER K	AD, PART, INTERP & ED, VOL & OUT REC.
JARVIS, JONATHAN B	REG. DIR. PACIFIC WEST REG.
JENSEN, LAWRENCE J	DEPUTY SOLICITOR.
JOHNSON, LYNN A	REGIONAL SOLICITOR.
JONES, KENNETH B	CHIEF SCIENTIST FOR GEOGRAPHY.
JORJANI, DANIEL H	COUNSELOR TO THE DEPUTY SECRETARY.
KEABLE, EDWARD T	ASSOCIATE SOLICITOR, ADMINISTRATION.
KEARNEY, CHRISTOPHER B	DEPUTY ASSISTANT SECRETARY FOR.
KEEGAN, MICHAEL J	ASSOC DIR, FACILITY & PROPERTY MGT.
KEEL, M. FRANKLIN	REGIONAL DIRECTOR.
KENDALL, MARY L	DEPUTY INSPECTOR GENERAL.
KIMBALL, DANIEL B	PARK MANAGER (SUPERINTENDENT).
KIMBALL, SUZETTE M	REGIONAL DIRECTOR, EASTERN REGION.
KINSINGER, ANNE E	REGIONAL DIRECTOR-WESTERN REGION.
KLEIN, ALLEN D	REGIONAL DIRECTOR.
KREISHER, ERNESTINE W	DIRECTOR, OFFICE OF COMMUNICATIONS.
KRUMSIEK, PAUL A	HUMAN RESOURCE PROJECT LEADER.
LABELLE, ROBERT P	DEPUTY ASSOC. DIRECTOR FOR.

2007 PERFORMANCE REVIEW BOARD ELIGIBLES—Continued

LANE, RONGERLIS C L	AD, INFORMATION RESOURCES MGMT.
LARSEN, MATTHEW C	CHIEF SCIENTIST FOR HYDROLOGY.
LAWLER, JOSEPH M	REGIONAL DIRECTOR, NATIONAL.
LAWS, JULIA M	ASSISTANT DIRECTOR FOR HR SYSTEMS.
LEHMAN, DAVID T	SENIOR ADVISOR TO THE SECRETARY.
LEMON, JOHN R	DIRECTOR, NCTC.
LEWIS, SUZANNE	PARK MANAGER (SUPERINTENDENT).
LOFTIN, MELINDA J	DESIG. AGENCY ETHICS OFFICIAL.
LOHOEFENER, RENNE R	REGIONAL DIRECTOR-PORTLAND.
LONNIE, THOMAS P	STATE DIRECTOR.
LORDS, DELANO J	DIRECTOR TRUST REVIEW & AUDIT.
LORDS, DOUGLAS A	DEP SPEC TRUSTEE FIELD OPS.
LUTHI, RANDALL B	DIRECTOR.
LYDER, JANE M	LEGISLATIVE COUNSEL.
MALAM, PAMELA R	ASSOCIATE DIRECTOR FOR HUMAN CAPITAL.
MARTIN, STEPHEN P	PARK MANAGER.
MASICA, SUE E	CHIEF OF STAFF.
MATTHEWS, JANET S	ASSOC DIRECTOR, CULTURAL RESOURCES.
MAY, JAMES G	EXEC DIR, SO FLA ECO REST.
MCDONALD, JOHN W	REGIONAL DIRECTOR.
MCKENNA, ROBERT C	CHIEF INFORMATION OFFICER.
MCKEOWN, MATTHEW J	DEPUTY ASSOCIATE SOLICITOR.
MEAGHER, EDWARD F	DEPUTY CHIEF INFORMATION OFFICER.
MELIUS, THOMAS 0	REGIONAL DIRECTOR-ANCHORAGE.
MIDDLETON, ROBERT W	DIRECTOR, INDIAN ENERGY RESOURCES DEV.
MIKUNI, ALAN M	REGIONAL GEOGRAPHER, WR.
MILLER, MARY JANE A	BUDGET OFFICER.
MORE, ROBERT S	DIRECTOR, OFFICE OF HEARINGS.
MORIARTY, MARVIN E	REGIONAL DIRECTOR.
MORRIN, LAWRENCE H	REGIONAL DIRECTOR.
MOSHER, JAMES A	DEPUTY ASSISTANT SECRETARY.
MOYLE, THOMAS R. III	DEPUTY AIG FOR OFFICE OF MANAGEMENT.
MURPHY, TIMOTHY M	DEPUTY ASSISTANT DIRECTOR.
MYERS, RICHARD G	REGIONAL SOLICITOR-ALASKA REGION.
NEDD, MICHAEL D	AD, MINS, REAL, & RES PRO.
NYCE, JOHN W	ASSOC DIRECTOR, ACQUISITION SERVICES.
OLSEN, MICHAEL D	DEPUTY ASSISTANT SECRETARY.
O'NEILL, BRIAN	PARK MANAGER.
ONLEY, KAMERAN L	ASSISTANT DEPUTY SECRETARY.
OWENS, GLENDA HUDSON	DEPUTY DIRECTOR-OSM.
OYNES, CHRIS C	ASSOCIATE DIRECTOR FOR.
PARISIAN, EDWARD F	REGIONAL DIRECTOR.
PARKER, MAMIE A	ASST DIR-FISHERIES HABITAT CONSERV.
PARKINSON, LARRY R	DAS-LAW ENFORCEMENT & SECURITY.
PAYNE, GRAYFORD F	CHIEF FINANCIAL OFFICER.
PETERSON, LYNN	REGIONAL SOLICITOR.
PETTIS, RENEE M	ASSISTANT INSPECTOR GENERAL.
PETTY, TIMOTHY R	DEPUTY ASSISTANT SECRETARY.
PONCE, STANLEY L	SNR LIAISON-INTERAGENCY PROGRAMS.
POOL, MICHAEL J	STATE DIRECTOR.
POWERS, MICHAEL T	ASSOC DIR FOR FIN RPTING & SYSTEMS.
PULA, NIKOLAO IULI	DIRECTOR, OFFICE OF INSULAR AFFAIRS.
QUINT, ROBERT J	DIRECTOR, WASHINGTON OPERATIONS.
QUINTANA, ERNEST	REGIONAL DIRECTOR, MIDWEST REGION.
RAGSDALE, WILLIAM PATRICK	DEPUTY DIRECTOR-JUSTICE SERVICES.
REVER, JOHN N	DIR FAC, ENV, SAF & CUL RES MGMT.
REYNOLDS, THOMAS G	REGIONAL FIDUCIARY TRUST ADMIN.
RICHARDS, ANNE L	ASST INSPECTOR GENERAL FOR AUDITS.
RIDEOUT, STERLING J. JR	ASST DIRECTOR-PROGRAM SUPPORT.
ROBERSON, EDWIN L	AD, RENEWABLE RES & PLANNING.
ROTH, BARRY N	DEPUTY ASSOCIATE SOLICITOR.
RUGEN, CATHERINE E	REGIONAL FIDUCIARY TRUST.
RUNDELL, LINDA S C	STATE DIRECTOR.
RUSS, DAVID P	REGIONAL GEOLOGIST.
RUSSELL, MAJEL M	PRINCIPAL DEP ASST SEC-INDIAN AFFAI.
RYAN, BARBARA J	ASSOC. DIRECTOR FOR GEOGRAPHY.
RYAN, MICHAEL J	REGIONAL DIRECTOR.
SAFFARINIA, EGHBAL	ASSISTANT INSPECTOR GENERAL.
SALT, TERRENCE C	DIRECTOR EVERGLADES.
SANT, DONALD T	SENIOR POLICY ADVISOR.
SCHABACKER, CHRISTINE M	DIR, OFC OF POLICY ANALYSIS.
SCHMIDT, PAUL RUDOLPH	ASST DIR-MIG BIRDS & STATE PROG.
SCHOLZ, DONNA K	FIRE PROGRAM ANALYSIS PROJECT DIR.
SCOTT, MARY GIBSON	PARK MANAGER (SUPERINTENDENT).

2007 PERFORMANCE REVIEW BOARD ELIGIBLES—Continued

SEXTON, WILLIAM T	REGIONAL HYDROLOGIST, WR.
SHEAFFER, C. BRUCE	FINANCIAL ADVISOR (COMPTROLLER).
SHEEHAN, DENISE E	ASST-DIR BUDGET, PLNG & HR.
SHEPARD, EDWARD W	STATE DIRECTOR.
SHILLITO, DANIEL G	REGIONAL SOLICITOR.
SIDERELIS, KAREN C	ASSOC DIR FOR GEOSPATIAL INFORMATION.
SIERRA, SELMA	STATE DIRECTOR.
SIMPSON, JERRY W	ASSISTANT DIRECTOR, WORKFORCE MGMT.
SINGER, MICHELE F	DIR, OFC OF REGULATORY MGMT.
SKENANDORE, KEVIN B	ASSOCIATE DEPUTY DIRECTOR-WEST.
SKIBINE, GEORGE T C	DIRECTOR, OFC OF INDIAN GAMING MGMT.
SMITH, GARY L	DIR, EXT & INTERGOVERNMENTAL AFFAIRS.
SMITH, MICHAEL R	DEPUTY DIRECTOR, FIELD OPS.
SMYTH, PAUL B	DIR, INDIAN TRUST LIT OFC.
SNYDER, MICHAEL D	REGIONAL DIRECTOR, INTERMTN. REGION.
SONDERMAN, DEBRA E	DIR/ACQUISITION & PROP. MGMT.
SOUKUP, MICHAEL A	ASSOC DIR, NATURAL RESOURCES.
SPEAKS, STANLEY M	REGIONAL DIRECTOR.
STANSELL, KENNETH B	DEPUTY DIRECTOR.
STEVENS, ELIZABETH H	ASST DIR-EXTERNAL AFFAIRS.
STITH, E. MELODEE	ASSOCIATE DIRECTOR, ACQ & FIN ASST.
SZARO, ROBERT C	CHIEF SCIENTIST FOR BIOLOGY.
TAYLOR, WILLIE R	DIR, OFC ENV POL AND COMPL.
TAYLOR-GOODRICH, KAREN F	ASSOC DIR, VISITOR & RESOURCE PROTECT.
TERLAND, GENE R	STATE DIRECTOR.
THOMPSON, STEVEN P	FISH & WILDLIFE ADMINISTRATOR.
THORSEN, KIMBERLEY A	DIRECTOR, OFFICE OF LAW ENFORCEMENT.
THORSON,ROBYN	REGIONAL DIRECTOR-TWIN CITIES, MN.
TODD, LARRY L	DEP COM, POLICY, ADMIN, & BUDGET.
TOLLEFSON, MICHAEL J	PARK MANAGER (SUPERINTENDENT).
TRIEBSCH, GEORGE F	ASSOCIATE DIRECTOR FOR POLICY.
TSCHUDY, DEBORAH GIBBS	DEPUTY ASSOCIATE DIRECTOR FOR.
TUGGLE, BENJAMIN N	REGIONAL DIRECTOR, ALBUQUERQUE.
UPDIKE, RANDALL G	REGIONAL GEOLOGIST-CENTRAL REGION.
VELASCO, JANINE M	ASSISTANT DIRECTOR.
VERHEY, DAVID M	DEPUTY ASSISTANT SECRETARY.
VIRDEN, TERRANCE LEE	REGIONAL DIRECTOR-MIDWEST.
WADE, FOSTER L	DEPUTY ASSISTANT SECRETARY.
WAHLQUIST, BRENT T	REGIONAL DIRECTOR.
WAIDMANN, BRIAN	CHIEF OF STAFF.
WAINMAN, BARBARA W	DIRECTOR, OFFICE OF.
WARD, A. WESLEY JR	REGIONAL GEOLOGIST, WESTERN REGION.
WEAVER, JESS D	REGIONAL HYDROLOGIST-SOUTHEAST REG.
WEISMAN, SANDRA L	CHIEF, FINANCIAL ADVISOR.
WENK, DANIEL N	DEPUTY DIRECTOR, OPERATIONS.
WENKER, RONALD B	STATE DIRECTOR.
WHEELER, KATHLEEN J H	DEPUTY CHIEF HUMAN.
WILLENS, TODD D	DEPUTY ASSISTANT SECRETARY.
WILLIAMS, L C	ASSOCIATE DIRECTOR, FPPSSD.
WILLIAMS, MARGARET C	DEP SPEC TRUSTEE-TRUST ACCOUNTABILITY.
WISELY, SARAH E	STATE DIRECTOR.
WOLF, ROBERT W	DIR, PROGRAM & BUDGET.
WOOD, MICHAEL F	CHIEF OF STAFF.
WOODY, WILLIAM C	DIR. LAW ENFORCE, SEC. & PROT.
WORONKA, THEODORE	ASST DIR-FOR FINANCE & ADMIN.
ZIELINSKI, ELAINE Y	STATE DIRECTOR.
ZIPPIN, JEFFREY P	DEPUTY DIRECTOR, OHTA.

[FR Doc. 07–5432 Filed 10–31–07; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Proposed Riverton Dome Coal Bed Natural Gas and Conventional Gas Development, Wind River Indian Reservation, Fremont County, WY

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs, in cooperation with the Joint Business Council of the Eastern Shoshone and Northern Arapaho Tribes (JBC), Bureau of Land Management and U.S. Environmental Protection Agency (EPA), intends to file a Draft Environmental Impact Statement (DEIS) at EPA for the proposed coal bed natural gas and conventional gas development project, and that the DEIS is now

available for public review. The purpose of the proposed action is to meet the Eastern Shoshone and Northern Arapaho Tribes' need to maximize their economic benefit from this trust resource. This notice also announces a public hearing to receive comments on the DEIS.

DATES: Written comments on the DEIS must arrive by January 2, 2008.

The public hearing will be held November 28, 2007, starting at 7 p.m. and continuing until all those who register to make statements have been heard.

ADDRESSES: You may mail or hand carry written comments to Ray Nation, Bureau of Indian Affairs, Wind River Agency, P.O. Box 158, Fort Washakie, Wyoming 82514.

The public hearing will be held at St. Stephens Indian School, 134 Mission Road, St. Stephens, Wyoming.

You may obtain CD or paper copies of the DEIS by contacting Ray Nation at the address above or the telephone number below.

FOR FURTHER INFORMATION CONTACT: Ray Nation, (307) 332–3718.

SUPPLEMENTARY INFORMATION: The Riverton Dome Project Area is located on the Wind River Indian Reservation, approximately five miles southeast of Riverton, Wyoming, in Township 1S, Range 4E, Sections 13, 14, 23, 24, 25, 26, 35, and 36; Township 2S, Range 4E, Sections 1, 2, 11 and 12; Township 1S, Range 5E, Sections 17, 18, 19, 20, 29, 30, 31 and 32; and Township 2S, Range 5E, Sections 5, 6, 7, and 8, in Fremont County, Wyoming. The Project Area comprises approximately 13,804 acres, of which 12,656 acres of surface and minerals belong to the Eastern Shoshone and Northern Arapaho Tribes and approximately 1,148 acres (surface and minerals) are privately owned. Devon Energy Production Company, L.P. is the lessee and project proponent.

The DEIS analyzes three alternatives, the proposed action (Alternative A), Devon's existing leases (Alternative B), and no action (Alternative C). Under Alternative A, Devon would develop coal bed natural gas (CBNG) wells and conventional gas wells on its existing leases and on additional leases it has formally requested from the JBC. If development is implemented at 40-acre spacing, a maximum of 326 CBNG wells and 20 conventional gas wells may be drilled. However, Devon anticipates that 40-acre spacing may only be necessary under certain circumstances, and that 80-acre spacing is more likely, where up to 163 CBNG wells and 20 conventional gas wells may be drilled. Construction of wells, roads, pipelines, compressor stations and power lines would disturb approximately 1,511 surface acres. After interim reclamation, approximately 680 acres would remain disturbed throughout the 20 to 40-year life of the project.

Under Alternative B, a maximum of 151 CBNG wells and 20 conventional gas wells at 40-acre spacing, or a maximum of 70 CBNG wells and 20 conventional gas wells at 80-acre spacing, may be drilled. Construction of wells, roads, pipelines, compressor stations and power lines would disturb approximately 858 surface acres. After interim reclamation, approximately 373 acres would remain disturbed throughout the 20 to 40-year life of the project.

Under Alternative C, wells would only be developed on fee surface and minerals, through individual permits issued by the Wyoming Oil and Gas Conservation Commission, on a case-by-case basis. Devon estimates that under this no action alternative, a maximum of 24 CBNG wells at 40-acre spacing and two conventional gas wells may be drilled on private minerals. If 80-acre spacing is utilized, a total of 12 CBNG wells and two conventional gas wells may be drilled.

The DEIS analyzes the potential direct, indirect, and cumulative environmental impacts of the proposed action and alternatives on geology, paleontology, minerals, climate, air quality, soil, surface water and groundwater, land use, range resources, vegetation, wetlands, noxious weeds, wildlife and fisheries, threatened and endangered species, recreation, cultural resources, socioeconomics, environmental justice, transportation, visual resources, health and safety, noise, and fire management.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary-Indian Affairs by 209 DM 8.1.

Dated: October 19, 2007.

Carl J. Artman,

Assistant Secretary-Indian Affairs.

[FR Doc. E7–21512 Filed 10–31–07; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID 100 1220MA 241A: DBG081002]

Notice of Public Meeting: Joint Meeting of the Boise and Twin Falls Resource Advisory Councils to the Boise and Twin Falls Districts, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise and Twin Falls District Recreation Resource Advisory Council (Rec-RAC) Subcommittee, will hold a meeting as indicated below.

DATES: The meeting will be held November 29, 2007, beginning at 9 a.m. and adjourning at 5 p.m. The meeting will be held in the Training Building at the National Interagency Fire Center, 3833 S Development, Boise Idaho. Public comment periods will be held before the conclusion of the meeting.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393, or Beckie Wagoner, Administrative Assistant, Twin Falls District, 2536 Kimberly Rd., Twin Falls, ID 83301, (208) 735–2063.

SUPPLEMENTARY INFORMATION: In accordance with section 4 of the Federal Lands Recreation Enhancement Act of 2005, a Subcommittee has been established to provide advice to the

Secretary of the Interior, through the BLM, in the form of recommendations that relate to public concerns regarding the implementation, elimination or expansion of an amenity recreation fee; or recreation fee program on public lands under the jurisdiction of the U.S. Forest Service and the BLM in both the Boise and Twin Falls Districts located in southern Idaho. Items on the agenda include a presentation of recommendations by the Subcommittee Members, to the two full RACs, regarding approval or disapproval of the proposed implementation, elimination or expansion of identified amenity recreation fees, or fee programs within the Payette, Boise and Sawtooth National Forests, that were brought before the Subcommittee at their meeting on November 14, 2007.

Agenda items and location may change due to changing circumstances, including wildfire emergencies. All meetings are open to the public. The public may present written comments to the Subcommittee. Each formal subcommittee meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM Coordinators as provided above. Expedited publication is requested to give the public adequate notice.

Dated: October 26, 2007.

James Johansen,

Acting District Manager.

[FR Doc. E7–21492 Filed 10–31–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-400-1110-CB-241A]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council Meeting and Recreation Subcommittee Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) and Recreation RAC Subcommittee will meet as indicated below.

DATES: December 4, 2007. The meeting will start at 8 a.m. and end no later than 4 p.m. The public comment period will be from 1 p.m. to 1:30 p.m. The meeting will be held at the Wallace Inn, located at 100 Front Street, Wallace, ID 83873.

FOR FURTHER INFORMATION CONTACT: Lisa Wagner, RAC Coordinator, BLM Coeur d'Alene District, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815 or telephone (208) 769-5014.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda will include the following topics: Forest Service recreation fee proposals (Recreation RAC Subcommittee) and election of officers (RAC). Additional topics may be added and will be included in local media announcements. More information is available at *www.blm.gov/rac/id/id_index.htm*.

All meetings are open to the public. The public may present written comments to the RAC in advance of or at the meeting. Each formal RAC meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: October 26, 2007.

Stephanie Snook,

Acting District Manager.

[FR Doc. E7–21507 Filed 10–31–07; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–83979; 7–08807]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw on behalf of the Bureau of Land Management (BLM) approximately 944,343 acres of public lands from settlement, sale, location, entry, or patent under the United States mining laws, for a period of 2 years for the BLM to protect desert tortoise habitat, archaeological and cultural resources, and special wildlife and riparian values on 24 Areas of Critical Environmental Concern (ACEC). This notice temporarily segregates the lands for up to 2 years from location and entry under the United States mining laws while a proposed 20-year withdrawal application is being processed in accordance with Sec. 204 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1714 (2000).

DATES: Comments must be received by January 30, 2008.

ADDRESSES: Comments should be mailed to the Field Manager, BLM Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130–2301.

FOR FURTHER INFORMATION CONTACT: Jacqueline Gratton, BLM Nevada State Office, (775) 861–6532.

SUPPLEMENTARY INFORMATION: The applicant is the BLM Las Vegas Field Office. The petition/application requests the Secretary of the Interior to withdraw, for 20 years, the following described lands from location and entry under the United States mining laws, subject to valid existing rights:

Mount Diablo Meridian, Nevada

Amargosa Mesquite Trees ACEC (NVN 76865)

T. 16 S., R. 51 E.,
Sec. 35;
Sec. 36, SW¼.
T. 17 S., R. 51 E.,
Sec. 1, lots 3 and 4, S½NW¼, and S½;
Sec. 2;
Sec. 11, E½;
Secs. 12 and 13;
Sec. 14, E½;
Sec. 23, E½;
Secs. 24 and 25;
Sec. 26, E½;
Secs. 35 and 36.

Ash Meadows ACEC (NVN 76868)

T. 17 S., R. 50 E.,
Secs. 7 and 8;
Sec. 9, lots 1 to 12, inclusive;
Sec. 10, lots 1 to 8, inclusive;
Sec. 11;
Sec. 12, lots 1 to 15, inclusive;
Sec. 13;
Sec. 14, lots 1 to10, inclusive, and lots 12 to 16, inclusive;
Sec. 15, lots 1 to 4, inclusive;
Sec. 17, W½NE¼, NW¼, SW¼, and W½SE¼;
Sec. 18;
Sec. 19, lots 1, 2, and lots 5 to 10, inclusive, SE¼NW¼, and N½NE¼;
Sec. 20, NW¼ and N½SW¼;
Sec. 23, lots 1, 2, 5, and 6, N½SE¼, E½SW¼sSE¼, and SE¼SE¼;

Secs. 24 and 25;
Sec. 26, NE¼NE¼, E½NW¼NE¼, S½NE¼, SW¼NW¼, and S½SE¼NW¼;
Sec. 30, lots 3 to 10, inclusive, E½SW¼, and W½SE¼;
Sec. 31;
Sec. 32, W½W½;
Sec. 36, NE¼ and N½SE¼.
T. 18 S., R. 50 E.,
Sec. 5;
Sec. 6, lots 1 and 2, lots 8 to 12, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and W½W½SE¼;
Sec. 7, lots 4 to 10, inclusive, S½NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 8;
Sec. 9, W½NW¼ and SW¼;
Sec. 16, lot 2, W½NE¼, NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
Secs. 17 to 22, inclusive;
Sec. 25, S½;
Sec. 26, W½;
Secs. 27 to 29, inclusive, and
Secs. 33 to 36, inclusive.
T. 17 S., R. 51 E.,
Sec. 7;
Sec. 8, NW¼NE¼, W½SW¼NE¼, W½, and W½NW¼SE¼;
Sec. 17, S½NE¼NE¼, W½NE¼, SE¼NE¼, W½, and SE¼;
Secs. 18 to 20, inclusive;
Secs. 29 and 30;
Sec. 31, lots 1, 2, and 3, NE¼NE¼, W½NE¼, E½NW¼, NE¼SW¼, and SW¼SE¼;
Sec. 32, lots 1 to 4, inclusive, N½NW¼, and NE¼.
T. 18 S., R. 51 E.,
Sec. 17, E½E½;
Sec. 20, E½E½;
Sec. 29, S½ and E½NE¼;
Sec. 30, lots 3 and 4, E½SW¼ and SE¼;
Secs. 31 and 32.

Big Dune ACEC (NVN 76869)

T. 15 S., R. 48 E.,
Sec. 8, S½, unsurveyed;
Sec. 9, S½, unsurveyed;
Secs. 16 and 17, unsurveyed.
T. 22 S., R. 60 E.,
Sec. 32, W½NE¼NE¼NE¼, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, W½NE¼SE¼NE¼, W½SE¼NE¼, W½NE¼NE¼NW¼, S½NE¼NW¼, E½NE¼NW¼NW¼, E½SW¼NW¼NW¼, W½SE¼NW¼NW¼, E½NE¼SW¼NW¼, W½SW¼NW¼, SE¼SW¼NW¼, W½NE¼SE¼NW¼, W½SE¼NW¼, SE¼SE¼NW¼, and S½;
Sec. 33, NE¼NE¼SW¼, W½NW¼NE¼SW¼, S½NE¼SW¼, NW¼SW¼, W½NE¼SW¼SW¼, W½SW¼SW¼, SE¼SW¼SW¼, E½NE¼SE¼SW¼, W½SE¼SW¼, W½SE¼SE¼SW¼, N½SE¼, SW¼SE¼, W½NE¼SE¼SE¼, and NW¼SE¼SE¼.
T. 23 S., R 60 E.,
Sec. 4, lots 1 to 4, inclusive, and S½N½;
Sec. 5, lots 1 to 4, inclusive, and S½N½.

Arrow Canyon ACEC (NVN 76867)

T. 14 S., R. 64 E.,
Sec. 10, NW¼, E½SW¼, and SE¼, unsurveyed;
Sec. 11, SW¼, unsurveyed;
Sec. 13, unsurveyed;
Sec. 14, N½ and SE¼, unsurveyed;
Sec. 15, NE¼ and E½NW¼, unsurveyed.
T. 14 S., R. 65 E.,
Sec. 7, lots 3 and 4, E½SW¼ and SE¼.

Bird Spring ACEC (NVN 76870)

T. 24 S., R. 59 E.,
Sec. 4, lots 1 and 2, and S½NE¼.

Coyote Springs Tortoise ACEC (NVN 76871)

T. 13 S., R. 63 E.,
Sec. 20, that part lying east of Right-of-Way Nev 060729 (U.S. Highway 93) and south of Right-of-Way Nev 065185 (State of Nevada Highway 168);
Secs. 21, 22, 23, and 26, inclusive for those portions lying south of Right-of-Way Nev 065185 (State of Nevada Highway 168);
Sec. 27;
Secs. 28, 29, and 33, inclusive for those portions lying east of U.S. Fish & Wildlife Service (FWS) Management Boundary;
Secs. 34 and 35.
T. 13½ S., R. 63 E.,
Sec. 33, that part lying east of FWS Management Boundary, unsurveyed;
Secs. 34 and 35, unsurveyed.
T. 14 S., R. 63.,
Secs. 2 and 3, unsurveyed;
Secs. 4 and 9, inclusive for those portions lying east of FWS Management Boundary, unsurveyed;
Secs. 10, 11, 14, and 15, unsurveyed;
Secs. 16 and 21, inclusive for those portions lying east of FWS Management Boundary, unsurveyed;
Secs. 22, 23, 26, and 27, unsurveyed;
Secs. 28 and 33, inclusive for those portions lying east of FWS Management Boundary, unsurveyed;
Secs. 34 and 35, unsurveyed.
T. 15 S., R. 63 E.,
Sec. 2, unsurveyed;
Secs. 3, 4, and 10, inclusive for those portions lying east of FWS Management Boundary, unsurveyed;
Secs. 11 and 14, unsurveyed;
Sec. 15, that part lying east of FWS Management Boundary, unsurveyed;
Secs. 18 to 21, inclusive for those portions lying south of FWS Management Boundary, unsurveyed;
Sec. 22, that part lying east and south of FWS Management Boundary, unsurveyed;
Secs. 27 to 34, inclusive, unsurveyed.
T. 16 S., R. 63 E.,
Secs. 3 to 10, inclusive, secs. 15 to 22, inclusive, and secs. 28 to 33, inclusive.
T. 17 S., R. 63 E.,
Secs. 7, 8, and 9, secs. 16 to 21, inclusive, and 28 to 31, inclusive;
Sec. 32, that part lying west of powerline Right-of-Way N–53399.
T. 18 S., R. 63 E.,
Sec. 5, that part lying west of powerline Right-of-Way N–53399;
Secs. 6, 7, 8, 17, 18, 19, 29, and 30, for those portions lying west of powerline Right-of-Way N–53399;
Sec. 31, lots 7, 8, 9, 15, 18, and NW¼NE¼.
T. 19 S., R. 63 E.,
Sec. 6, that part lying west of powerline Right-of-Way N–53399.

Crescent Townsite ACEC (NVN 76872)

T. 28 S., R. 61 E.,
Sec. 29, SW¼ and W½SE¼, excluding patented lands;
Sec. 30, E½SE¼;
Sec. 32, W½NE¼ and E½NW¼.

Devil's Throat ACEC (NVN 76874)

T. 17 S., R. 70 E.,
Sec. 26.

Gold Butte Part A, ACEC (NVN 76875)

T. 14 S., R. 69 E.,
Secs. 24, 25, 26, 34, 35, and 36.
T. 15 S., R. 69 E.,
Secs. 1, 2, 3, 9, and 10;
Sec. 11, N½, N½SW¼, N½SE¼, SW¼SW¼ and SE¼SE¼;
Secs. 12 and 13;
Sec. 14, NE¼NE¼, S½NE¼, S½NW¼, NW¼NW¼ and S½;
Secs. 15 and 16;
Secs. 21 to 28, inclusive, and secs. 33 to 36, inclusive.
T. 16 S., R. 69 E.,
Secs. 1 to 4, inclusive, and 8 to 17, inclusive;
Secs. 20 to 28, inclusive, and 33 to 36, inclusive.
T. 17 S., R. 69 E.,
Secs. 1, 2, 3, and 11 to 14, inclusive;
Secs. 24, 25, and 36, excluding patented lands.
T. 18 S., R. 69 E.,
Sec. 1, excluding patented lands.
T. 14 S., R. 70 E.,
Sec. 1;
Secs. 10 to 36, inclusive.
T. 15 S., R. 70 E.,
Secs. 2 to 11, inclusive, and secs. 15 to 20, inclusive;
Secs. 21 and 22, excluding patented lands;
Secs. 28 to 33, inclusive.
T. 16 S., R. 70 E.,
Secs. 4 to 11, inclusive, and secs. 13 to 36, inclusive.
T. 17 S., R. 70 E.,
Secs. 1 to 36, inclusive.
T. 18 S., R. 70 E.,
Secs. 1 to 6, inclusive, secs. 10 to 15, inclusive, secs. 22 to 27, inclusive, secs. 34, 35, and 36, unsurveyed.
T. 13 S., R. 71 E.,
Sec. 32; sec. 33, that part lying west of Range Improvement (Fence) 0101.
T. 14 S., R. 71 E.,
Sec. 4, that part lying west of Range Improvement (Fence) 0101;
Secs. 5 to 8, inclusive;
Secs. 9, 10, and 15, inclusive for those portions lying west of Range Improvement (Fence) 0101;
Secs. 16 to 20, inclusive;
Sec. 21, that part lying northwest of NVCC 022455 Pipeline Right-of-Way;
Secs. 22 and 28, inclusive for those portions lying west of NVCC 022455 Pipeline Right-of-Way;
Secs. 29, 30, and 31.
T. 16 S., R. 71 E.,
Sec. 19;
Secs. 29 to 32, inclusive.
T. 17 S., R. 71 E.,

Secs. 4 to 10, inclusive, secs. 15 to 22, inclusive, and secs. 27 to 34, inclusive, unsurveyed.
T. 18 S., R. 71 E.,
Secs. 3 to 10, inclusive, secs. 15 to 22, inclusive, and secs. 27 to 34, inclusive, unsurveyed.
T. 19 S., R. 71 E.,
Secs. 3, 4, 9, 10, 15, 16, 21, and 22, unsurveyed;
Secs. 27 and 28, for those portions lying north of Withdrawal Reclamation Project (Wdl Recl Proj) of 1/31/1903.

Gold Butte Part B, ACEC (NVN 76876)

T. 17 S., R. 69 E.,
Secs. 22 and 23;
Sec. 26, excluding patented lands;
Secs. 27 and 34;
Sec. 35, excluding patented lands.
T 18 S., R. 69 E.,
Sec. 2, excluding patented lands;
Secs. 3, 9, and 10;
Secs. 11 and 12, excluding patented lands;
Sec. 13;
Sec. 14, excluding patented lands;
Secs. 15, 16, 17,
Secs. 20 to 29, inclusive, and secs. 32 to 36, inclusive.
T.19 S., R. 69 E.,
Secs. 1 and 2, inclusive, excluding patented lands;
Secs. 3 to 10, inclusive;
Sec. 11, excluding patented lands;
Secs. 12 to 36, inclusive.
T. 20 S., R. 69 E.,
Secs. 1 to 17, inclusive;
Secs. 18, 19, and 20, inclusive for those portions lying northeast of the Bureau of Reclamation Project boundary;
Secs. 21 to 27, inclusive;
Secs. 28, 29, and 33, for those portions lying northeast of the Bureau of Reclamation Project boundary.
T. 18 S., R. 70 E.,
Secs. 7, 8, 9, secs. 16 to 21 inclusive, and secs. 28 to 33, inclusive, unsurveyed.
T. 19 S., R. 70 E.,
Secs. 1 to 36, inclusive, unsurveyed.
T. 20 S., R. 70 E.,
Secs. 1 to 11, inclusive, secs. 14 to 22, inclusive, and secs. 27 to 30, inclusive, unsurveyed.
T. 19 S., R. 71 E.,
Secs. 5 to 8, inclusive, secs. 17 to 20, inclusive, and secs. 29 and 30, unsurveyed;
Secs. 31 and 32, inclusive for those portions lying northeast of Bureau of Reclamation Project boundary.

Gold Butte Townsite ACEC (NVN 76877)

T. 19 S., R. 70 E.,
Sec. 17, S½NW¼ and N½SW¼, unsurveyed.

Hidden Valley ACEC (NVN 076878)

T. 18 S., R. 65 E.,
Sec. 26, W½, unsurveyed;
Sec. 27, E½, unsurveyed;
Secs. 34 and 35, unsurveyed.
T. 19 S., R. 65 E.,
Sec. 2, W½, unsurveyed;
Sec. 3, unsurveyed;
Sec. 10, N½, unsurveyed;
Sec. 11, NW¼, unsurveyed.

Keyhole Canyon ACEC (NVN 76879)

T. 26 S., R. 63 E.,
Sec. 3, lots 6, 7, and 8, and SW¼NE¼ and S½NW¼.

Mormon Mesa Tortoise ACEC (NVN 76880)

T. 13 S., R. 63 E.,
Sec. 25, lots 3, 4, 7, and 9, SW¼NW¼ and S½;
Sec. 36.
T. 13½ S., R. 63 E.,
Sec. 36, unsurveyed.
T. 14 S., R. 63 E.,
Sec. 1, unsurveyed.
T. 13 S., R. 64 E.,
Secs. 1 to 5, inclusive, unsurveyed.
Sec. 6, lots 1 and 2, S½NE¼ and SE¼, unsurveyed;
Sec. 7, NE¼ and E½SE¼, unsurveyed;
Secs. 8 to 17, inclusive, and secs. 20 to 29, inclusive, unsurveyed;
Sec. 30, that part lying south of Right-of-Way Nev 065185 (State of Nevada Highway 168), unsurveyed;
Secs. 31 to 36, inclusive, unsurveyed.
T. 13½ S., R. 64 E.,
Secs. 31 to 35, inclusive, unsurveyed;
Sec. 36, that part lying north of Right-of-Way Nev 060130 (U.S. Highway 93), unsurveyed.
T. 14 S., R. 64 E.,
Secs. 2 to 6, inclusive, secs. 8 to 11, inclusive, and secs. 15 and 16, inclusive, unsurveyed.
T. 13 S., R. 65 E.,
Sec. 1, lots 2, 3, and 4, and SW¼NE¼, S½NW¼, SW¼ and W½SE¼;
Secs. 2 to 24, inclusive;
Sec. 26, N½;
Sec. 27, N½;
Sec. 28, N½ and SW¼;
Secs. 29 and 30;
Sec. 31, that part lying north of Right-of-Way Nev 060130 (U.S. Highway 93);
Sec. 32;
Sec. 33, W½.
T. 13 S., R. 66 E.,
Secs. 1 to 5, inclusive;
Sec. 6, lots 1 to 4, inclusive, and S½NE¼, SE¼NW¼, E½SW¼ and SE¼;
Sec. 7 to 18, inclusive;
Sec. 19, lots 1 to 4, inclusive, SE¼NW¼, E½SW¼ and SW¼SE¼;
Secs. 20 to 24, inclusive.
T. 13 S., R. 67 E.,
Secs. 1 to 36, inclusive.
T. 14 S., R. 67 E.,
Secs. 1 to 5, inclusive;
Sec. 6, lots 1 and 2, and S½NE¼ and SE¼;
Sec. 7, NE¼;
Secs. 8 to 11, inclusive;
Secs. 12 to 15, inclusive for those portions lying north of Right-of-Way Nev 061478 (U.S. Interstate 15);
Sec. 16;
Sec. 17, N½ and SE¼;
Sec. 20, E½;
Secs. 21 and 22, inclusive for those portions lying north of Right-of-Way Nev 061478 (U.S. Interstate 15).
T. 13 S., R. 68 E.,
Secs. 1 to 32, inclusive;
Secs. 33 to 36, inclusive for those portions lying north of Right-of-Way Nev 061478 (U.S. Interstate 15).
T. 14 S., R. 68 E.,
Secs. 4 to 7, inclusive for those portions lying north of Right-of-Way Nev 061478 (U.S. Interstate 15).
T. 13 S., R. 69 E.,
Secs. 1 to 24, inclusive;
Sec. 25, lots 1, 3, 12, and 15, N½ and N½SE¼;
Sec. 26, lots 1, 5, 8, 10, 11, and 14, and N½NE¼, SE¼NE¼ and NE¼NW¼;
Sec. 27, lots 1, 3, 5, 7, and 9;
Sec. 28, lots 1, 3, 5, and 8, and N½N½;
Sec. 29, lots 1, 5, 8, 11, and 13, and N½NE¼, SW¼NE¼ and NW¼;
Sec. 30, lots 5 to 10, inclusive, lots 12 to 16, inclusive, lots 18, 20, 23, and 26, NE¼ and NW¼SE¼.
T. 13 S., R. 70 E.,
Secs. 4 and 5, west of Boundary Line; **
Secs. 6 and 7;
Secs. 8, 9, and 17, west of Boundary Line;
Secs. 18 and 19;
Secs. 20 and 29, west of Boundary Line;
Sec. 30, lots 5, 6, 7, 9, 12, 14, and 16;
Sec. 31, lots 9 and 11, both portions north of Right-of-Way Nev 064785 (U.S. Interstate 15) centerline;
Sec. 32, lot 9.

** The ''Boundary Line'' as denoted in the above legal descriptions for the Mormon Mesa ACEC refers to the eastern boundary line of the ACEC, which follows closely the edge of the Mesa and Toquop Wash. However, the line is not the Mesa edge, nor Toquop Wash, but follows closely between the two. The ''Boundary Line'' denoted for the eastern edge of the ACEC is shown on the 7.5 minute USGS Flat Top Mesa Topographic Map.

Piute/Eldorado Tortoise ACEC (NVN 76881)

T. 28 S., R. 60 E.,
Secs. 2, 3, 10, and 11;
Sec. 13, W½ and SE¼;
Secs. 14 to 17, inclusive, and secs. 21, 22, and 23;
Sec. 24, all, excluding patented lands;
Secs. 25 and 26, for both portions lying north of Right-of-Way Nev 058548 (State of Nevada Highway 164);
Sec. 26, that part lying north of Right-of-Way Nev 058548 (State of Nevada Highway 164);
Sec. 27.
T. 26 S., R. 61 E.,
Secs. 1 and 2, secs. 11 to 14, inclusive, and secs. 24, 25, and 36.
T. 27 S., R. 61 E.,
Secs. 1, 12, and 13, secs. 23 to 26, inclusive, secs. 35 and 36.
T. 28 S., R. 61 E.,
Secs. 1 and 2, and secs. 10 to 12, inclusive;
Secs. 13, 14, and 15, for those portions lying north of Right-of-Way Nev 058548 (State of Nevada Highway 164);
Sec. 16;
Sec. 19, excluding patented lands;
Sec. 20, that part lying north of Right-of-Way Nev 058548 (State of

Nevada Highway 164) and excluding patented lands;
Secs. 21, 22, 29, and 30, inclusive for those portions lying north of Right-of-Way Nev 058548 (State of Nevada Highway 164).
T. 29 S., R. 61 E.,
Sec. 36.
T. 26 S., R. 62 E.,
Secs. 3 to 10, inclusive, and secs. 15 to 20, inclusive;
Sec. 22, E½ and N½NW¼;
Secs. 23 to 26, inclusive;
Sec. 27, NE¼;
Secs. 29 to 32, inclusive, and secs. 35 and 36.
T. 27 S., R. 62 E.,
Sec. 1, secs. 5 to 8, inclusive, and sec.12;
Sec. 13, E½;
Secs. 17 to 20, inclusive;
Sec. 24, E½;
Sec. 25, E½;
Secs. 29 to 36, inclusive.
T. 28 S., R. 62 E.,
Secs. 1 to 17, inclusive;
Sec. 18, that part lying north of Right-of-Way Nev 058548 (State of Nevada Highway 164);
Secs. 20 and 21;
Sec. 22, N½, N½SW¼ and SE¼;
Secs. 23 to 26, inclusive;
Sec. 27, NE¼, S½NW¼ and S½;
Secs. 28 and 29;
Sec. 31, lots 14 and 15, N½SE¼, excluding patented lands;
Secs. 32 to 36, inclusive.
T. 29 S., R. 62 E.,
Secs. 1 to 5, inclusive;
Sec. 6, E½;
Secs. 7 to 32, inclusive;
Sec. 33, NE¼NE¼ and NW¼NW¼;
Secs. 34 to 36, inclusive.
T. 30 S., R. 62 E.,
Secs. 1 and 2;
Secs. 11 to 14, inclusive.
T. 27 S., R. 62½ E.,
Secs. 1, 12, 13, 24, 25, and 36, unsurveyed.
T. 26 S., R. 63 E.,
Sec. 19;
Sec. 20, that part lying west of Right-of-Way NVCC 020733 (U.S. Interstate 95) and south of powerline Right-of-Way N–00869;
Secs. 21 to 25, inclusive for those portions lying south of powerline Right-of-Way N–00869;
Secs. 26 to 36, inclusive.
T. 27 S., R. 63 E.,
Secs. 1 to 36, inclusive.
T. 28 S., R. 63 E.,
Secs. 1 to 8, inclusive;
Sec. 9, excluding patented lands;
Secs. 10 and 11;
Sec. 12, lots 1 to 8, inclusive, and N½;
Sec. 13, lots 1, 2, and 3, and NW¼NE¼, S½NE¼, NW¼, N½SW¼, and SE¼;
Sec. 14, lots 1 and 8, and N½;
Sec. 15, excluding patented lands;
Secs. 16 to 20, inclusive;
Sec. 29, that part lying north of Right-of-Way Nev 058548 (State of Nevada Highway 164);
Sec. 30, excluding SE¼NE¼ that part lying south of Right-of-Way Nev 058548 (State of Nevada Highway 164) and excluding E½SE¼;
Sec. 31;
Sec. 32, W½SW¼ and SE¼SW¼.
T. 29 S., R. 63 E.,
Sec. 5 to 10, inclusive, and sec. 15 to 22, inclusive;
Secs. 23, 24, and 25, for those portions lying west of Right-of-Way NVCC 020845 (U.S. Interstate 95);
Secs. 26 to 36, inclusive.
T. 30 S., R. 63 E.,
Secs. 1 to 16, inclusive, and secs. 21 to 24, inclusive;
Sec. 25, excluding patented lands;
Secs. 26 to 29, inclusive, and secs. 32 to 35, inclusive;
Sec. 36, excluding patented lands.
T. 31 S., R. 63 E.,
Sec. 1, lots 3 and 4, and S½NW¼ and SW¼;
Sec. 2;
Sec. 3, lots 1, 2, and 3, and S½NE¼, SE¼NW¼ and S½;
Sec. 4, lot 4, and SW¼NW¼;
Secs. 5, 8, 10, and 11;
Sec. 12, W½ and W½SE¼;
Sec. 13, W½ and W½E½;
Secs. 14, 15, secs. 22 to 26, inclusive, and 36.
T. 26 S., R. 64 E.,
Secs. 29 and 30, inclusive for those portions lying south of powerline Right-of-Way N–00869;
Secs. 31, 32, and 33.
T. 27 S., R. 64 E.,
Secs. 4 to 9 and secs. 16 to 23, inclusive;
Sec. 25, excluding patented lands;
Secs. 26 and 27;
Secs. 28 and 29, inclusive excluding patented lands;
Secs. 30 and 31;
Secs. 32 and 33, inclusive excluding patented lands;
Secs. 34, 35, and 36.
T. 28 S., R. 64 E.,
Secs. 1 to 6, inclusive;
Secs. 7 and 8, excluding patented lands;
Secs. 9 to 16, inclusive;
Secs. 17 and 18, excluding patented lands;
Secs. 21 to 26, inclusive, and 35 and 36.
T. 29 S., R. 64 E.,
Secs. 1, 2, 3, secs. 9 to 16, inclusive, secs. 21 to 28, inclusive, and secs. 31 to 36, inclusive.
T. 30 S., R. 64 E.,
Secs. 1 to 29, inclusive;
Sec. 31, lots 3 and 4, lots 13 to 68, inclusive, and E½NE¼, E½SW¼ and SE¼;
Secs. 32 to 36, inclusive.
T. 31 S., R. 64 E.,
Secs. 1 to 31, inclusive;
Sec. 32, N½ and SW¼;
Secs. 33 to 36, inclusive.
T. 32 S., R. 64 E.,
Secs. 1, 2, and 3;
Sec. 4, lots 1 and 2, lots 5 to 24, inclusive, lots 34 to 47, inclusive, lots 59 to 82, inclusive, and lots 84 to 128, inclusive, and S½SE¼NW¼, SW¼, S½NE¼SE¼, SE¼NW¼SE¼, E½SW¼SE¼ and SE¼SE¼;
Sec. 5, lots 6 to 9, inclusive, lots 12 and 13, lots 15 to 22, inclusive, lots 25 to 29, inclusive, lots 32 to 37, inclusive, lots 40 to 45, inclusive, lots 47 to 78, inclusive, and SW¼NE¼, SE¼NW¼ and NW¼SE¼;
Secs. 6 and 8;
Sec. 9, lots 1, 2, 7 and 8, lots 10 to 21, inclusive, lots 27 to 30, inclusive, lots 38 to 41, inclusive, lots 48, 49, 56, 63, 75, 76, 77, and lots 79 to 84, inclusive, and SW¼NE¼ and NW¼SE¼;
Secs. 10 to 16, inclusive, secs. 22 to 26, inclusive, and sec. 36.
T. 30 S., R. 65 E.,
Secs. 4, 5, and 6, unsurveyed;
Secs. 7, 8, and 9, excluding patented lands, unsurveyed;
Sec. 16, unsurveyed;
Secs. 17 and 18, inclusive, excluding patented lands, unsurveyed;
Secs. 19, 20, 21, 30 and 31, unsurveyed.
T. 31 S., R. 65 E.,
Sec. 6, and secs. 28 to 33, inclusive, unsurveyed.
T. 32 S., R. 65 E.,
Secs. 2 to 8, inclusive;
Secs. 9 to 12, inclusive for those portions lying north and west of Right-of-Way NVCC 022416 (State of Nevada Highway 163);
Secs. 17 to 20, inclusive and secs. 29 to 32, inclusive.
T. 33 S., R. 65 E.,
Sec. 5.

Rainbow Gardens ACEC (NVN 76882)

T. 20 S., R. 62 E.,
Sec. 12;
Sec. 13, lots 1, 2, 15 and 16;
Secs. 24 and 25;
Sec. 35, lots 1 to 4, inclusive;
Sec. 36.
T. 21 S., R. 62 E.,
Secs. 1, 12 and 13;
Sec. 14, E½.
T. 20 S., R. 63 E.,
Sec. 1, N½, NW¼NE¼SW¼,

N½NW¼SW¼, SW¼NW¼SW¼, SW¼SW¼, and W½SE¼SW¼, unsurveyed;
Secs. 2 and 7, unsurveyed;
Sec. 8, W½, unsurveyed;
Sec. 11, excluding patented lands, unsurveyed;
Sec. 12, NW¼NW¼ and W½SW¼, unsurveyed;
Sec. 13, W½NE¼NW¼, W½NW¼, W½SE¼NW¼, SW¼, S½NE¼SE¼, W½NW¼SE¼ and S½SE¼, unsurveyed;
Secs. 14 to 34, inclusive, unsurveyed.
T. 21 S., R. 63 E.,
Secs. 3 to 10 inclusive, and secs. 16 to 18, inclusive;
Sec. 19, N½ and SE¼;
Sec. 20;
Sec. 21, N½, SW¼, N½SE¼ and SW¼SE¼.
T. 20 S., R. 64 E.,
Secs. 4 and 5;
Sec. 8, N½ and SE¼;
Secs. 9 and 16;
Sec. 19, lots 7 and 8, and SE¼SW¼;
Sec. 20, S½NE¼, NE¼SW¼, S½SW¼ and SE¼;
Sec. 21;
Secs. 28, 29, and 30.

Red Rock Spring ACEC (NVN 76883)

T. 17 S., R. 70 E.,
Sec. 7, SE¼;
Sec. 8, SW¼;
Sec. 17, NW¼;
Sec. 18, NE¼.

River Mountains ACEC (NVN 76884)

T. 21 S., R. 63 E.,
Sec. 36, N½.
T. 22 S., R. 63 E.,
Secs. 11, 12, and 13;
Sec. 23, E½;
Secs. 24 and 25;
Sec. 26, E½;
Sec. 36.
T. 22 S., R. 63½ E.,
Secs. 12, 13, 24, 25, and 36.
T. 23 S., R. 63½ E.,
Sec. 1, lots 1 to 7, inclusive, and S½NE¼.

Sloan Rock Art ACEC (NVN 76885)

T. 23 S., R. 61 E.,
Sec. 35, S½S½.
T. 24 S., R. 61 E.,
Sec. 2, lots 1 to 4, inclusive.

Stump Spring ACEC (NVN 76886)

T. 22 S., R. 55 E.,
Sec. 32, S½.
T. 23 S., R. 55 E.,
Sec. 5, lots 1 to 4, inclusive, and S½N½.

Virgin Mountain (Gold Butte Part C) ACEC (NVN 76887)

T. 15 S., R. 70 E.,
Sec. 1;
Secs. 12, 13, and 14, secs, 23 to 27, inclusive and secs. 34, 35, and 36.
T. 16 S., 70 E.,
Secs. 1, 2, 3, and 12.
T. 14 S., 71 E.,
Secs. 32, 33, and 34.
T. 15 S., 71 E.,
Secs. 3 to 10, inclusive, secs. 15 to 22 inclusive, and secs. 27 to 34, inclusive, unsurveyed.
T. 16 S., 71 E.,
Secs. 3 to 10, inclusive, and secs. 15 to 18, inclusive;
Secs. 20 and 21;
Sec. 22, lots 1 and 2, E½NW¼ and NE¼SW¼;
Sec. 27, lots 2, 3, and 4, SE¼NW¼ and E½SW¼;
Secs. 28, 33, and 34.
T. 17 S., 71 E.,
Sec. 3, unsurveyed.

Virgin River ACEC (NVN 76888)

T. 14 S., R. 69 E.,
Sec. 11, SE¼;
Sec. 12, W½NE¼, NW¼ and NW¼SW¼;
Sec. 14, N½NE¼, NW¼, N½SW¼ and SE¼SW¼;
Sec. 15, SE¼;
Sec. 22, NE¼ and S½;
Secs. 26, 27, and 28, for those portions of public land lying north of Gold Butte Back Country Byway Road;***
Sec. 29, S½;
Sec. 32, N½, SW¼ and SE¼SE¼;
Sec. 33, public land lying north of Gold Butte Back Country Byway Road.
T. 13 S., R. 70 E.,
Sec. 27, lots 8, 10, 17, 19, and 21, and that part lying south of Right-of-Way Nev 065014 (U.S. Interstate 15);
Sec. 33, lots 1, 11, 13, 15, and 17, SW¼, N½SE¼ and SW¼SE¼, that part lying south of Right-of-Way Nev 065014 (U.S. Interstate 15);
Sec. 34, lots 1 to 4, inclusive, 6, 10, and 11 and NW¼NW¼, that part lying south of Right-of-Way Nev 65014 (U.S. Interstate 15) and north of Right-of-Way Nev 07490 (State of Nevada Highway 170).
T. 14 S., R. 70 E.,
Sec. 3, lot 4, that portion lying north of Right-of-Way Nev 07490 (State of Nevada Highway 170);
Secs. 4 and 5, those portions lying northwest of Right-of-Way Nev 07490 (State of Nevada Highway 170);
Sec. 6, lots 1, 2, 6, and 7, S½NE¼, E½SW¼ and SE¼;
Secs. 7 and 8, those portions lying north of Right-of-Way Nev 07490 (State of Nevada Highway 170);

*** The Gold Butte Back Country Byway is a Clark County, Nevada Revised Statute 2477 road.

Whitney Pocket ACEC (NVN 76889)

T. 16 S., R. 70 E.,
Sec. 23, SE¼.

The areas described above aggregate approximately 944,343 acres in Clark and Nye County.

The BLM petition/application has been approved by the Assistant Secretary, Land and Minerals Management. Therefore, it constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the withdrawal is to protect and preserve the biological and cultural resources with 24 ACECs. These ACECs are situated in remote and relatively pristine areas of the Mojave Desert, encompassing significant and/or unique biological and cultural resource values. To mitigate for loss of sensitive resources resulting from urbanization, the proposal would withdraw the subject lands from mineral location and entry.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300. The use of a right-of-way, interagency, or a cooperative agreement would not adequately constrain non-discretionary uses which could adversely affect the special wildlife and riparian areas, threatened and endangered species and their habitats (specifically the threatened desert tortoise), archaeological and cultural resources, historic and prehistoric areas, paleontological and geological resources, and natural hazard areas. The uniqueness of these resources, habitats, and areas could also be irreversibly damaged.

No water rights would be needed to fulfill the purpose of this withdrawal.

Records relating to the application may be examined by interested parties at the BLM Las Vegas Field Office.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Las Vegas Field Office. Facsimiles, telephone calls, and electronic mails are unacceptable means of notification.

Comments, including names and street addresses of respondents, will be available for public review at the BLM Las Vegas Field Office, at the address noted above during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comments be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

In accordance with 43 CFR 2310.3–1(b)(2)(v) a public meeting will be provided in connection with the proposed withdrawal at a location to be determined. The public will be notified of the date, time, and location of the public meeting through a notice published in the **Federal Register** at least 30 days before the scheduled date of the public meeting.

Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature may be allowed in accordance with the Las Vegas Resource Management Plan, but only with the approval of an authorized officer of the BLM during the temporary segregation period.

This withdrawal proposal will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

(Authority: 43 CFR 2310.3–1)

Dated: October 26, 2007.

Michael R. Holbert,

Deputy State Director, Natural Resources, Lands & Planning.

[FR Doc. E7–21517 Filed 10–31–07; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Second Review)]

Fresh Tomatoes from Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the suspended investigation on fresh tomatoes from Mexico.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether termination of the suspended investigation on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 21, 2007. Comments on the adequacy of responses may be filed with the Commission by January 14, 2008. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 08–5–175, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background. On November 1, 1996, the Department of Commerce (''Commerce'') suspended an antidumping duty investigation on imports of fresh tomatoes from Mexico (61 FR 56618). On October 1, 2001, Commerce initiated a five-year review of the suspended investigation (66 FR 49926). On the basis of the withdrawal from the suspension agreement by Mexican tomato growers which accounted for a significant percentage of all fresh tomatoes imported into the United States from Mexico, Commerce terminated the suspension agreement, terminated the review, and resumed the antidumping investigation, effective July 30, 2002 (67 FR 50858, August 6, 2002). On December 16, 2002, Commerce once again suspended the antidumping duty investigation on imports of fresh tomatoes from Mexico (67 FR 77044). The Commission is now conducting a second review to determine whether termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Mexico.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* For the purpose of the preliminary investigation, the Commission defined the *Domestic Like Product* as all fresh market tomatoes. Fresh market tomatoes do not include processing tomatoes.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. For the purpose of the preliminary investigation, the

Commission defined the *Domestic Industry* as growers and packers of fresh tomatoes.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 21, 2007. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 14, 2008. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided In Response To This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended investigation on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2001.

(7) If you are a U.S. producer of the *Domestic Like Product,* provide the

following information on your firm's operations on that product during calendar year 2006 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* grown or packed in your U.S. facility(ies); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* grown or packed in your U.S. facility(ies).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2006 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2006 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2001, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: October 25, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–21330 Filed 10–31–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Second Review)]

Fresh Tomatoes From Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the suspended investigation on fresh tomatoes from Mexico.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether termination of the suspended investigation on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 21, 2007. Comments on the adequacy of responses may be filed with the Commission by January 14, 2008. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On November 1, 1996, the Department of Commerce (''Commerce'') suspended an antidumping duty investigation on imports of fresh tomatoes from Mexico (61 FR 56618). On October 1, 2001,

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 08–5–175, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Commerce initiated a five-year review of the suspended investigation (66 FR 49926). On the basis of the withdrawal from the suspension agreement by Mexican tomato growers which accounted for a significant percentage of all fresh tomatoes imported into the United States from Mexico, Commerce terminated the suspension agreement, terminated the review, and resumed the antidumping investigation, effective July 30, 2002 (67 FR 50858, August 6, 2002). On December 16, 2002, Commerce once again suspended the antidumping duty investigation on imports of fresh tomatoes from Mexico (67 FR 77044). The Commission is now conducting a second review to determine whether termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Mexico.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. For the purpose of the preliminary investigation, the Commission defined the *Domestic Like Product* as all fresh market tomatoes. Fresh market tomatoes do not include processing tomatoes.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. For the purpose of the preliminary investigation, the Commission defined the Domestic Industry as growers and packers of fresh tomatoes.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 21, 2007. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 14, 2008. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the

Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided In Response To This Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended investigation on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2001.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2006 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* grown or packed in your U.S. facility(ies); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* grown or packed in your U.S. facility(ies).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2006 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2006 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2001, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: October 25, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–21334 Filed 10–31–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–749 (Second Review)]

Persulfates From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on persulfates from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on persulfates from China would be likely to lead to continuation or recurrence of material

injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is December 21, 2007. Comments on the adequacy of responses may be filed with the Commission by January 14, 2008. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 1, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On July 7, 1997, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of persulfates from China (62 FR 36259). Following five-year reviews by Commerce and the Commission, effective December 24, 2002, Commerce issued a continuation of the antidumping duty order on imports of persulfates from China (67 FR 78415). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and its expedited review determination, the Commission found a single *Domestic Like Product* consisting of ammonium, sodium, and potassium persulfates.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited review determination, the Commission defined the *Domestic Like Product* as producers of ammonium, sodium, and potassium persulfates.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is December 21, 2007. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 08–5–176, expiration date June 30, 2008. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is January 14, 2008. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be provided in response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2001.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2006 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2006 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2006 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2001, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider

include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: October 25, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–21336 Filed 10–31–07; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States; Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to the public for observation but not participation.

DATES: January 14–15, 2008.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: United States Court of Appeals, Richard H. Chambers Court of Appeals Building, Pasadena Mezzanine, 125 South Grand Avenue, Pasadena, CA 91105–1621.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: October 22, 2007.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 07–5419 Filed 10–31–07; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Committees on Appellate, Bankruptcy, Civil and Criminal Rules

AGENCY: Judicial Conference of the United States; Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules.

ACTION: Notice of proposed amendments and open hearings.

SUMMARY: The Advisory Committees on Appellate, Bankruptcy, Civil, and Criminal Rules have proposed amendments to the following rules:

Appellate Rules: 4, 5, 6, 10, 12, 15, 19, 22, 25, 26, 27, 28.1, 30, 31, 39, 40, 41 and new Rule 12.1;

Bankruptcy Rules: 1007, 1011, 1019, 1020, 2002, 2003, 2006, 2007, 2007.2, 2008, 2015, 2015.1, 2015.2, 2015.3, 2016, 3001, 3015, 3017, 3019, 3020, 4001, 4002, 4004, 4008, 6003, 6006, 6007, 7004, 7012, 7052, 8001, 8002, 8003, 8006, 8009, 8015, 8017, 9006, 9021, 9027, 9033, and new Rules 1017.1 and 7058, revisions to Official Form 8, and new Official Form 27;

Civil Rules: 6, 8, 12, 13, 14, 15, 23, 27, 32, 38, 48, 50, 52, 53, 54, 55, 56, 59, 62, 65, 68, 71.1, 72, 81, Supplemental Rules B, C, and G, and Illustrative Civil Forms 3, 4, 60, and new Rule 62.1; and

Criminal Rules: 5.1, 7, 12.1, 12.3, 29, 32, 32.2, 33, 34, 35, 41, 45, 47, 58, 59, Rule 8 of the Rules Governing § 2254 Cases and Rule 8 of the Rules Governing § 2255 Proceedings, and Rule 11 and new Rule 12 of the Rules Governing § 2254 Cases, and Rule 11 of the Rules Governing § 2255 Proceedings.

The text of the proposed rules amendments and new rules and the accompanying Committee Notes can be found at the United States Federal Courts' Home Page at *http://www.uscourts.gov/rules.*

The Judicial Conference Committee on Rules of Practice and Procedure submits these proposed rules amendments and new rules for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary as soon as convenient and, in any event, not later than February 15, 2008. All written comments on the proposed rule amendments can be sent by one of the following three ways: By overnight mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544; by electronic mail at *Rules_Comments@ao.uscourts.gov*; or by facsimile to Peter G. McCabe at (202) 502–1766. In accordance with established procedures all comments submitted on the proposed amendments are available to public inspection.

Public hearings are scheduled to be held on the amendments to:

- Appellate Rules in Pasadena, California, on January 16, 2008, and in New Orleans, Louisiana, on February 1, 2008;
- Bankruptcy Rules in Pasadena, California, on January 16, 2008, and in Washington, DC, on January 25, 2008;
- Civil Rules in Pasadena, California, on January 16, 2008, and in Washington, DC, on January 28, 2008; and
- Criminal Rules in Pasadena, California, on January 16, 2008, and in Washington, DC, on January 18, 2008.

Those wishing to testify should contact the Committee Secretary at the above address in writing at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, Telephone (202) 502–1820.

Dated: October 22, 2007.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 07–5452 Filed 10–31–07; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 26, 2007.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: John Kraemer, OMB Desk Officer for the Occupational Safety and Health

Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not a toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title: Cranes and Derricks Standard for Construction (29 CFR 1926.550).

OMB Control Number: 1218–0113.

Affected Public: Private Sector: Business or other for-profits.

Estimated Number of Respondents: 91,997.

Estimated Total Annual Burden Hours: 103,076.

Estimated Total Annual Costs Burden: $570,074.

Description: The Cranes and Derricks Standard at 29 CFR 1926.550 and its information collection requirements protect employees who operate, or work near, cranes or derricks. The Standard contains posting and certification requirements. These requirements ensure employees will operate cranes or derricks according to the crane/derricks limitations and specifications and that the machinery is properly functioning.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title: Logging Operations (29 CFR 1910.266).

OMB Control Number: 1218–0198.

Affected Public: Private Sector: Business or other for-profits and farms.

Estimated Number of Respondents: 11,447.

Estimated Total Annual Burden Hours: 31,286.

Estimated Total Annual Costs Burden: $0.

Description: Title 29 CFR 1910.266(i)(10)(i) specifies that employers engaging in logging operations must provide written certification that employees and supervisors completed certain required training, including first-aid training, while paragraph (i)(10)(ii) mandates that employers retain these certificates until replaced by more recent certificates. Establishing and maintaining this written certification of training assures the employer that the training specified by the Standard has been conducted, and at the required frequencies. In addition, these records provide the most efficient means for an OSHA compliance officer to determine whether an employer conducted the required training at the necessary and appropriate frequencies.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–21467 Filed 10–31–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Job Corps; Advisory Committee on Job Corps; Meeting

AGENCY: Office of Job Corps.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: On August 22, 2006, the Advisory Committee on Job Corps (ACJC) was established in accordance with the provisions of the Workforce Investment Act and the Federal Advisory Committee Act. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

DATES: The meeting will be held on November 14, 2007 from 8 a.m. to 3 p.m.

ADDRESSES: The Advisory Committee meeting will be held at the Pointe Hilton Squaw Peak Resort Hotel, 7677 North 16th Street, North Phoenix, Phoenix, AZ 85013. Telephone: (602) 997–2626.

FOR FURTHER INFORMATION CONTACT: Crystal Woodard, Office of Job Corps, 202–693–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 22, 2006 the Advisory Committee on Job Corps (71 FR 48949) was established in accordance with the provisions of the Workforce Investment Act, and the Federal Advisory Committee Act. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

Agenda: The agenda for the meeting will be a continuation of report outs from the Committee's three subcommittees and discussion of draft recommendations.

Public Participation: The meeting will be open to the public. Seating will be available to the public on a first-come first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact the Job Corps official listed above, if special accommodations are needed.

Signed at Washington, DC, this 25th day of October 2007.

Esther R. Johnson,

National Director, Office of Job Corps.

[FR Doc. E7–21488 Filed 10–31–07; 8:45 am]

BILLING CODE 4510–23–P

NUCLEAR REGULATORY COMMISSION

Revised Notice of Intent To Prepare a Generic Environmental Impact Statement for Uranium Milling Facilities

AGENCY: United States Nuclear Regulatory Commission (NRC).

ACTION: Revised Notice of Intent (NOI).

SUMMARY: This notice revises a notice published on September 27, 2007, in the **Federal Register** (72 FR 54947), which announced, in part, that the scoping period for the NRC's Generic Environmental Impact Statement (GEIS) for uranium recovery facilities was extended to October 31, 2007. The purpose of this revised notice is to further extend the scoping comment period to November 30, 2007.

DATES: The NRC has received a letter dated October 16, 2007, from the National Mining Association (NMA) in which the NMA requested an extension of the date for submitting comments on the scope of the GEIS. In response, the NRC has determined that the public scoping period for the GEIS is extended to November 30, 2007. This is the 3rd extension of the comment period, which originally was to end on September 4, 2007. However, due to several requests, the period first was extended to October 8, 2007, and then again until October 31, 2007. With this current extension, the comment period will be approximately 130 days and greatly exceeds the typical length of NRC scoping comment periods. Thus NRC does not intend to provide any further extensions of the comment period. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent possible.

ADDRESSES: Members of the public and interested parties are invited, and encouraged to submit comments to the Chief, Rulemaking, Directives and Editing Branch, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Also, the NRC encourages comments to be submitted electronically to *NRCREP@nrc.gov*. Please refer to the ''Uranium Recovery GEIS'' when submitting comments.

FOR FURTHER INFORMATION CONTACT: For general information on the NRC NEPA process, or the environmental review process related to this GEIS, please contact: James Park, Project Manager, Division of Waste Management and Environmental Protection (DWMEP), Mail Stop T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, by phone at 1 (800) 368–5642, extension 6935, or by e-mail at *JRP@nrc.gov*. For general or technical information associated with the safety and licensing of uranium milling facilities, please contact: William Von Till, Branch Chief, Uranium Recovery Branch, DWMEP, Mail Stop T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by phone at 1 (800) 368–5642, extension 0598, or by e-mail at *RWV@nrc.gov*.

Information and documents associated with the GEIS are available for public review through the NRC electronic reading room: *http://www.nrc.gov/reading-rm/adams.html*. Documents may also be obtained from the NRC Public Document Room at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, MD 20852–2738.

GEIS related documents will also be found at the following public libraries:

Albuquerque Main Library, 501 Copper NW., Albuquerque, New Mexico 87102, 505–768–5141.

Mother Whiteside Memorial Library, 525 West High Street, Grants, New Mexico 87020, 505–287–4793.

Octavia Fellin Public Library, 115 W. Hill Avenue, Gallup, New Mexico 87301, 505–863–1291.

Natrona County Public Library, 307 East Second Street, Casper, Wyoming 82601, 307–237–4935.

Fremont County Public Library, 275 North 2nd Street, Lander, Wyoming 82520, 307–332–5194.

Carbon County Public Library, 215 W Buffalo Street, Rawlins, Wyoming 82301, 307–328–2618.

SUPPLEMENTARY INFORMATION:

1.0 Background

The NRC is expecting numerous license applications for in-situ leach (ISL) uranium milling facilities in the coming 2–3 years. This GEIS is intended to address the common issues associated with environmental reviews of such milling facilities located in the western United States. Due to environmental issues common to ISL milling facilities, the NRC staff will be addressing these common issues generically to aid in a more efficient environmental review for each separate license application, if and when these applications are submitted.

ISL milling facilities recover uranium from low grade ores that may not be economically recoverable by other methods. In this process, a leaching agent, such as oxygen with sodium bicarbonate, is added to native ground water for injection through wells into the subsurface ore body to dissolve the uranium. The leach solution, containing the dissolved uranium, is pumped back to the surface and sent to the processing plant, where ion exchange is used to separate the uranium from the solution. The underground leaching of the uranium also frees other metals and minerals from the host rock. Operators of ISL facilities are required to restore the ground water affected by the leaching operations. The milling process concentrates the recovered uranium into the product known as ''yellowcake'' (U_3O_8). This yellowcake is then shipped to uranium conversion facilities for further processing in the overall uranium fuel cycle.

One alternative to ISL milling is the conventional uranium milling process that extracts uranium from mined ore. At conventional mills, the ore arrives via truck and is crushed, ground, and leached. In most cases, sulfuric acid is the leaching agent, but alkaline leaching can also be done. The leaching agent not only extracts uranium from the ore but also several other constituents (e.g., vanadium, selenium, iron, lead, and arsenic). Conventional mills extract 90 to 95 percent of the uranium from the ore. These mills are typically in areas of low population density, and they typically process ores from mines within 50 kilometers (30 miles). Conventional mills may also produce significant quantities of waste materials, known as mill tailings, from the ore processing. These tailings are contained in impoundments which can be as large as 250 to 300 acres in extent. It is estimated that roughly 95 percent of the incoming ore ends as mill tailings. These mill tailings contain most of the radioactive progeny of uranium and may be a significant source of radon and radon progeny releases to the environment.

The GEIS will focus on the construction, operation, and decommissioning of ISL mills and also assesses alternative methods of uranium recovery. It is noted that the hardrock mining associated with conventional uranium milling is regulated by other entities (e.g., the U.S. Bureau of Land Management, and various state agencies).

For more information on the uranium fuel cycle, please see Regulating Nuclear Fuel, NUREG/BR–0280, Rev. 1, (which can be found online at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0280/).*

2.0 Alternatives To Be Evaluated

No action—The no-action alternative would be to not build nor license potential uranium milling facilities.

Under this alternative the NRC would not approve future license applications. This alternative serves as a baseline for comparison of the potential environmental impacts.

Proposed action—The proposed action is the construction, operation, and decommissioning of an ISL uranium mill. Implementation of the proposed action would require the issuance of an NRC license under the provisions of 10 CFR part 40.

Alternatives—The conventional milling process is one alternative. Other alternatives not listed in this notice may be identified through the scoping process.

3.0 Environmental Impact Areas To Be Analyzed

The following resource areas have been tentatively identified for analysis in the GEIS:

—*Public and Occupational Health:* addressing the potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events), and decommissioning;

—*Waste Management:* addressing the types of wastes expected to be generated, handled, stored or subject to re-use or disposal;

—*Land Use:* addressing land use plans, policies and controls;

—*Transportation:* addressing the transportation modes, routes, quantities, and risk estimates;

—*Geology and Soils:* addressing the physical geography, topography, geology and soil characteristics;

—*Water Resources:* addressing the surface and ground water hydrology, water use and quality, and the potential for degradation;

—*Ecology:* addressing wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;

—*Air Quality:* addressing meteorological conditions, ambient background, pollutant sources, and the potential for degradation;

—*Noise:* addressing ambient noises, sources, and sensitive receptors;

—*Historical and Cultural Resources:* addressing historical, archaeological, and traditional cultural resources;

—*Visual and Scenic Resources:* Addressing landscape characteristics, man-made features and viewshed;

—*Socioeconomics:* Addressing the demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources;

—*Environmental Justice:* Addressing the potential disproportionately high and adverse impacts to minority and low-income populations; and

—*Cumulative Effects:* Addressing the impacts from past, present, and reasonably foreseeable actions at and near the site.

The examples under each resource areas are not intended to be all inclusive, nor is this list an indication that environmental impacts will occur. The list is presented to facilitate comments on the scope of the GEIS. Additions to, or deletions from, this list may occur as a result of the public scoping process.

4.0 Tiering

Tiering refers to the coverage of general matters in broader environmental impact statements with subsequent narrower statements or environmental analyses incorporating by reference the general discussions and concentrating solely on the issues specific to the narrower statement (40 CFR 1508.28). The NRC intends to use the GEIS to address common issues associated with environmental reviews of ISL uranium milling facilities located in the western United States and then develop site-specific environmental assessments or site-specific environmental impact statements which will tier off the common issues identified and evaluated in the GEIS.

5.0 Scoping Comments

Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the GEIS, and to identify the significant issues related to the proposed action. Scoping is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern.

Written comments should be mailed to the address listed above in the **ADDRESSES** section. Scoping comments may also be submitted electronically via email to *NRCREP@nrc.gov*. Please refer to the ''Uranium Recovery GEIS'' when submitting comments. The NRC staff will prepare a scoping summary report, in which it will summarize public comments. The NRC will make the scoping summary report and project-related materials, along with other relevant information on the GEIS, available at an NRC Web site, *http://www.nrc.gov/materials/fuel-cycle-fac/licensing/geis.html* so that the public can keep abreast of the current schedule and progress on the development of the GEIS.

6.0 The NEPA Process

The GEIS will be prepared according to NEPA and NRC's NEPA implementing regulations contained in 10 CFR part 51.

After the scoping process is complete, the NRC will prepare a draft GEIS. The draft GEIS is scheduled to be published by April 2008. A public comment period on the draft GEIS is planned, and public meetings to receive comments will be held approximately 3 weeks after publication of the draft GEIS.

Availability of the draft GEIS, the dates of the public comment period on the draft GEIS, and information about the public comment meetings will be announced in the **Federal Register**, on NRC's Web page, and in the local news media. The final GEIS is expected to be published in January 2009 and will address, as appropriate, the public comments received on the draft GEIS.

Dated at Rockville, Maryland, this 29th day of October, 2007.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E7–21604 Filed 10–31–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28037]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 26, 2007.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October, 2007. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 2007, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

For Further Information Contact: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Dover Regional Financial Shares

[File No. 811–4744]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 30, 1994, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $33,885 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on September 18, 2007, and amended on October 23, 2007.

Applicant's Address: 11 Hanover Sq., 12th Floor, New York, NY 10005.

Eaton Vance Global Enhanced Equity Income Fund

[File No. 811–21711]

Eaton Vance Tax-Managed Buy-Write Research Fund

[File No. 811–21821]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applications were filed on October 1, 2007.

Applicants' Address: The Eaton Vance Building, 255 State St., Boston, MA 02109.

Advisory Hedged Opportunity Fund

[File No. 811–21288]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 1, 2005, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $395,000 incurred in connection with the liquidation were paid by RiverSource Investments, LLC, applicant's investment adviser.

Filing Date: The application was filed on September 25, 2007.

Applicant's Address: 50210 Ameriprise Financial Center, Minneapolis, MN 55474.

BlackRock Europe Fund, Inc.

[File No. 811–6042]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 16, 2006, applicant transferred its assets to BlackRock EuroFund (formerly, Merrill Lynch EuroFund), based on net asset value. Expenses of approximately $249,051 incurred in connection with the reorganization were paid by applicant's investment adviser, Merrill Lynch Investment Managers, L.P. or its affiliates.

Filing Dates: The application was filed on July 13, 2007, and amended on October 23, 2007.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Merrill Lynch Strategy Series, Inc.

[File No. 811–9617]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 28, 2006, applicant transferred its assets to corresponding series of Merrill Lynch Global Allocation Fund, Inc. (now BlackRock Global Allocation Fund, Inc.) and Merrill Lynch Large Cap Series Funds, Inc. (now BlackRock Large Cap Series Funds, Inc.), based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Dates: The application was filed on July 13, 2007, and amended on October 23, 2007.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Merrill Lynch Inflation Protected Fund

[File No. 811–21473]

Master Inflation Protected Trust

[File No. 811–21518]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On October 16, 2006, each applicant transferred its assets to a corresponding series of BlackRock Funds, based on net asset value. Expenses of approximately $264,737 and $582, respectively, incurred in connection with the reorganizations were paid by the acquiring fund's investment adviser, BlackRock, Inc. or its affiliates.

Filing Dates: The applications were filed on July 13, 2007, and amended on October 23, 2007.

Applicants' Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Colonial New York Insured Municipal Fund

[File No. 811–9539]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On June 14, 2005, applicant made a final liquidating distribution to its common shareholders, based on net asset value. Applicant distributed to its preferred shareholders an amount equal to the liquidation preference with respect to the preferred shares of beneficial interest, plus an amount equal to all accumulated but unpaid dividends. Expenses of $45,000 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on October 21, 2005, and amended on October 3, 2007.

Applicant's Address: One Financial Center, Boston, MA 02110.

SouthEast Tax Exempt Income Trust

[File No. 811–2960]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On August 15, 2006, applicant made a final liquidating distribution, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on October 9, 2007.

Applicant's Address: 388 Greenwich St., New York, NY 10013.

Hutton Investment Trust

[File No. 811–3647]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On January 9, 2006, applicant made a final liquidating distribution, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on October 9, 2007.

Applicant's Address: 388 Greenwich St., New York, NY 10013.

ThomasLloyd Funds

[File No. 811–9156]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 28, 2007, applicant transferred its assets to the Catalyst OPTI-*flex*® Fund, a series of Catalyst Funds, based on net asset value. Expenses of $35,452 incurred in connection with the reorganization were paid by ThomasLloyd Global Asset Management (Americas) LLC, applicant's investment adviser.

Filing Date: The application was filed on October 11, 2007.

Applicant's Address: 427 Bedford Rd., Pleasantville, NY 10570.

Van Kampen World Portfolio Series Trust

[File No. 811–6220]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 11, 2001, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of the $44,000 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on October 12, 2007.

Applicant's Address: 522 Fifth Ave., New York, NY 10036.

Alpha Hedge Fund, Inc.

[File No. 811–21577]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 15, 2007, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of less than $5,000 incurred in connection with the liquidation were paid by Adams Asset Advisors, LLC, applicant's investment adviser.

Filing Date: The application was filed on October 16, 2007.

Applicant's Address: 8150 N. Central Expressway #101, Dallas, TX 75206.

Baron Capital Funds Trust

[File No. 811–8505]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 5, 2007, Applicant made distributions of its assets to its shareholders in connection with its merger with LVIP Baron Growth Opportunities Fund, a series of Lincoln Variable Insurance Products Trust. Expenses of approximately $ 475,913 incurred in connection with the merger were paid by applicant's adviser, BAMCO, Inc., and the acquiring fund's sponsor, The Lincoln National Life Insurance Company, or one of its affiliates.

Filing Dates: The application was filed on July 12, 2007, and amended on October 19, 2007 and October 24, 2007.

Applicant's Address: 767 Fifth Avenue, 49th Floor, New York, NY 10153.

Jefferson Pilot Variable Fund, Inc.

[File No. 811–4161]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 27, 2007, Applicant made distributions of its assets to its shareholders in connection with the merger of its portfolios with certain series (''Acquiring Portfolios'') of the Lincoln Variable Insurance Products Trust. Expenses of approximately $1,090,882 incurred in connection with the merger were paid by Lincoln National Life Insurance Company, Janus Capital Management LLC, an investment adviser of one of the Acquiring Portfolios, and some of the Acquiring Portfolios (*i.e.*, LVIP Growth and Income Fund, the LVIP Bond Fund, the LVIP S&P 500 Fund, the LVIP Delaware Managed Fund, and the LVIP Small-Cap Index Fund).

Filing Dates: The application was filed on July 26, 2007, and amended on October 19, 2007.

Applicant's Address: One Granite Place, Concord, NH 03301.

PFL Variable Life Account A

[File No. 811–9579]

Summary: Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On May 1, 2006, applicant made a liquidating distribution to its sole shareholder, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on December 22, 2006, and amended on September 27, 2007.

Applicant's Address: 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E7–21485 Filed 10–31–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56713; File No. SR–Amex–2007–74]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Shares of Funds of the Rydex ETF Trust

October 29, 2007.

I. Introduction

On July 13, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] On July 31, 2007, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 14, 2007 for a 15-day comment period.[3] The Commission received one comment letter regarding the proposal.[4] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

Amex Rules 1000A–AEMI and 1001A–1005A provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company for exchange trading. These securities are registered under the Investment Company Act of 1940, as well as under the Act. Index Fund Shares are defined in Amex Rule 1000A–AEMI(b)(1) generally as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index. Amex Rule 1000A–AEMI(b)(2) permits the Exchange to list and trade Index Fund Shares that seek to provide investment results that exceed the performance of an underlying securities index by a specified multiple or that seek to provide investment results that correspond to a specified multiple of the inverse or opposite of the index's performance.[5]

The Exchange proposes to list and trade under Amex Rule 1000A–AEMI shares (the ''Shares'') of forty-five new funds of the Rydex ETF Trust (the ''Trust'') that are designated as the Rydex Leveraged Funds (the ''Leveraged Funds''), Rydex Inverse Funds (the ''Inverse Funds''), and Rydex Leveraged Inverse Funds (the ''Leveraged Inverse Funds,'' and together with the Leveraged Funds and Inverse Funds, collectively, the ''Funds''). Each of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56218 (August 7, 2007), 72 FR 45469 (''Notice'').

[4] *See* letter to Nancy M. Morris, Secretary, Commission, from Melanie C. Maloney, Dickstein Shapiro LLP on behalf of ProFund Advisors LLC and ProShare Advisors LLC, dated August 28, 2007 (''ProFunds Letter'').

[5] *See* Amex Rule 1000A–AEMI(b)(2)(iii) and Commentary .02 thereto (providing that the listing and trading of Index Fund Shares under paragraph (b)(2) thereof may not be approved by the Exchange pursuant to Rule 19b–4(e) under the Act (17 CFR 240.19b–4(e)).

Funds has a distinct investment objective by attempting, on a daily basis, to correspond to a specified multiple of the performance, or the inverse performance, of a particular equity securities index.

The Funds will be based on the following benchmark indexes: (1) The S&P 500 Index; (2) the S&P MidCap 400 Index; (3) the S&P Small Cap 600 Index; (4) the Russell 1000 Index; (5) the Russell 2000 Index; (6) the Russell 3000 Index; (7) the S&P 500 Consumer Discretionary Index; (8) the S&P 500 Consumer Staples Index; (9) the S&P 500 Energy Index; (10) the S&P 500 Financials Index; (11) the S&P 500 HealthCare Index; (12) the S&P 500 Industrials Index; (13) the S&P 500 Information Technology Index; (14) the S&P 500 Materials Index; and (15) the S&P 500 Utilities Index (each individually, an ''Underlying Index,'' and all Underlying Indexes collectively, the ''Underlying Indexes'').[6]

The Leveraged Funds will seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the corresponding Underlying Indexes. The net asset value (''NAV'') of the Shares of each of these Leveraged Funds, if successful in meeting its objective, should increase, on a percentage basis, approximately twice as much as the respective Fund's Underlying Index gains when the prices of the securities in such Underlying Index increase on a given day, and should decrease approximately twice as much as the respective Underlying Index loses when such prices decline on a given day.

The Inverse Funds will seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) of the Underlying Indexes. If each of these Inverse Funds is successful in meeting its objective, the NAV of the Shares of each Inverse Fund should increase approximately as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Underlying Index decline on a given day, or should decrease approximately as much as the respective Underlying Index gains when the prices of the securities in the Underlying Index rise on a given day.

The Leveraged Inverse Funds will seek daily investment results, before fees and expenses, that correspond to twice the inverse (−200%) of the daily performance of the Underlying Indexes. If each of these Leveraged Inverse Funds is successful in meeting its objective, the NAV of the Shares of each Leveraged Inverse Fund should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Underlying Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the Underlying Index rise on a given day.

Rydex Investments is the investment advisor (the ''Advisor'') to each Fund and is registered under the Investment Advisers Act of 1940. While the Advisor will manage each Fund, the Trust's Board of Trustees (the ''Board'') will have overall responsibility for the Funds'' operations. Rydex Distributors, Inc. (the ''Distributor''), a broker-dealer registered under the Act, will act as the distributor and principal underwriter of the Shares. State Street Bank & Trust will act as the index receipt agent (the ''Index Receipt Agent'') for which it will receive fees and will be responsible for transmitting the Deposit List (as defined below) to the National Securities Clearing Corporation (''NSCC'') and for the processing, clearance, and settlement of purchase and redemption orders through the facilities of the Depository Trust Company (''DTC'') and NSCC on behalf of the Trust. The Index Receipt Agent will also be responsible for the coordination and transmission of files and purchase and redemption orders between the Distributor and the NSCC.

Availability of Information About the Shares and Underlying Indexes

Quotations and last-sale information for the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CT'').[7] In addition, to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, the Exchange will calculate and disseminate through the CT and Consolidated Quote High Speed Lines an Indicative Intra-Day Value (''IIV'') at least every 15 seconds throughout Amex's trading day,[8] the market value of a Share for each Fund, the most recent NAV for each Fund, the number of Shares outstanding for each Fund, and the estimated cash amount and total cash amount per Creation Unit (as defined below). The Exchange will make available on its Web site daily trading volume, the closing prices, the NAV, and the final dividend amounts to be paid for each Fund.

In addition, the value of each Underlying Index will be updated intra-day on a real-time basis as its individual component securities change in price. These intra-day values of each Underlying Index will be disseminated at least every 15 seconds throughout the trading day by Amex or another organization authorized by the relevant Underlying Index provider. Several independent data vendors also package and disseminate Underlying Index data in various value-added formats, including vendors displaying both securities and Underlying Index levels and vendors displaying Underlying Index levels only.

The Trust's Internet Web site (*http://www.rydexinvestments.com*) will contain the following information for each Fund's Shares: (1) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (2) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (3) its prospectus and product description; and (4) other quantitative information, such as daily trading volume. The prospectus and/or product description for each Fund will inform investors that the Trust's Internet Web site has information about the premiums and discounts at which the Fund's Shares have traded.

Each Fund's total portfolio composition will be disclosed on the Web site of the Trust or another Internet Web site as determined by the Trust and/or the Exchange. The Trust will provide Web site disclosure of each Fund's portfolio holdings daily and will include, as applicable, the names and number of Shares held of each specific equity security, the specific types of

[6] A detailed discussion of each of the Underlying Indexes, the investment objective of the Funds, the portfolio investment methodology, and the investment techniques, can be found in the Notice. *See* Notice, *supra* note 3, 72 FR at 45471–45474. *See also* Amex Rule 1002A(b)(i)(B) (providing that the Exchange will consider the suspension of trading in, or removal from listing of, a series of Index Fund Shares if, among other circumstances, the Underlying Index or portfolio is replaced with a new index or portfolio, subject to certain exceptions).

[7] E-mail from Nyieri Nazarian, Assistant General Counsel, Amex, to Edward Cho, Special Counsel, Division of Market Regulation, Commission, dated August 22, 2007 (confirming the information to be disseminated through the facilities of the CT).

[8] A detailed discussion of the calculation methodology of the IIV for each of the Funds can be found in the Notice. *See* Notice, *supra* note 3, 72 FR at 45477.

Financial Instruments [9] and characteristics of such Financial Instruments, and the cash equivalents and amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund and the disclosure by the Advisor of the ''IIV File'' (as described below) and the portfolio composition file, or ''PCF,'' will occur at the same time. Therefore, the same portfolio information (including accrued expenses and dividends) will be provided on the public Web site(s), as well as in the IIV File and PCF provided to Authorized Participants.[10]

Creation and Redemption of Shares [11]

Each Fund will issue and redeem Shares only in aggregations of at least 50,000 (each aggregation, a ''Creation Unit''). Purchasers of Creation Units will be able to separate the Creation Units into individual Shares. Once the number of Shares in a Creation Unit is determined, it will not change thereafter (except in the event of a stock split or similar revaluation). The initial value of a Share for each of the Funds is expected to be in the range of $50–$250.

At the end of each business day, the Trust will prepare the list of names and the required number of Shares of each Deposit Security (as defined below) to be included in the next trading day's Creation Unit for each Leveraged Fund (the ''Deposit List''). The Trust will then add to the Deposit List the cash information effective as of the close of business on that business day and create a PCF for each Fund, which will be transmitted to NSCC before the opening of business the next business day. The information in the PCF will be available to all participants in the NSCC system.

Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to Financial Instruments, the Advisor has developed an ''IIV File,'' which it will use to disclose the Funds' holdings of Financial Instruments. The IIV File will contain, for each Leveraged Fund (to the extent that it holds Financial Instruments) and Inverse and Leveraged Inverse Fund, information sufficient by itself or in connection with the PCF and other available information for market participants to calculate a Fund's IIV and effectively value such Fund. The IIV File, together with the applicable information in the PCF in the case of Leveraged Funds, will also be the basis for the next business day's NAV calculation.

Under normal circumstances, the Leveraged Funds will be created and redeemed either entirely for cash and/or for a deposit basket of equity securities (''Deposit Securities''), *plus* a ''Balancing Amount.'' The Deposit Securities and the Balancing Amount collectively are referred to as the ''Creation Deposit.'' The Balancing Amount is a cash payment designed to ensure that the value of a Creation Deposit is identical to the value of the Creation Unit. The Balancing Amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.[12] Under normal circumstances, the Inverse and Leveraged Inverse Funds will be created and redeemed entirely for cash. The IIV File published before the open of business on a business day will, however, permit NSCC participants to calculate (by means of calculating the IIV) the amount of cash required to create a Creation Unit and the amount of cash that will be paid upon redemption of a Creation Unit, for each Inverse and Leveraged Inverse Fund for that business day.

Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of Index Fund Shares under Amex Rule 1002A. A minimum of two Creation Units (at least 100,000 Shares) will be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Index Fund Shares. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity. The Exchange, pursuant to Amex Rule 1002A(a)(ii), will obtain a representation from the Trust (for each Fund), prior to listing, that the NAV per Share for each Fund will be calculated daily and made available to all market participants at the same time. The Exchange represents that the Trust is required to comply with Rule 10A–3 under the Act [13] for the initial and continued listing of the Shares.

Amex Trading Rules and Trading Halts

The Shares are equity securities subject to Amex rules governing the trading of equity securities. The Exchange states that Amex Rule 154–AEMI(c)(ii) [14] and Commentary .04 to Amex Rule 190 [15] apply to Index Fund Shares listed on the Exchange, including the Shares.

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares. These factors include, but are not limited to, (1) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In the case of Financial Instruments held by a Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the Advisor is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the Advisor will be made by phone, facsimile, or e-mail. The Exchange would then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Shares. Trading in Shares of the Funds will also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Amex Rule 1002A(b)(ii) sets forth the trading halt parameters with respect to Index Fund Shares. If the IIV or the Underlying Index value applicable to

[9] The financial instruments to be held by any of the Funds may include stock index futures contracts, options on futures contracts, options on securities and indices, equity caps, collars and floors, as well as swap agreements, forward contracts, repurchase agreements, and reverse repurchase agreements (the ''Financial Instruments''). *See* Notice, *supra* note 3, 72 FR at 45472 n.22.

[10] An Authorized Participant is: (1) *Either* (a) a broker-dealer or other participant in the continuous net settlement system of the NSCC, or (b) a DTC participant; and (2) a party to a participant agreement with the Distributor. *See* Notice, *supra* note 3, 72 FR at 45473 n.26.

[11] A detailed discussion of the procedures for creating and redeeming Shares with respect to each of the Funds, including a description of the relevant transaction fees, can be found in the Notice. *See* Notice, *supra* note 3, 72 FR at 45474–45476.

[12] While not typical, if the market value of the Deposit Securities is greater than the NAV of a Creation Unit, then the Balancing Amount will be a negative number, in which case the Balancing Amount will be paid by the Leveraged Fund to the purchaser, rather than vice-versa.

[13] 17 CFR 240.10A–3 (setting forth listing standards relating to audit committees).

[14] Amex Rule 154–AEMI(c)(ii) provides that stop and stop limit orders to buy or sell a security, the price of which is derivatively priced based upon another security or index of securities, may be elected by a quotation. The Exchange states that the Shares are eligible for this treatment.

[15] Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security or securities that can be subdivided or converted into the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

Information Circular

The Exchange, in an Information Circular to Exchange members and member organizations, prior to the commencement of trading, will inform members and member organizations regarding the application of Commentary .06 of Amex Rule 1000A–AEMI to the Funds. The Information Circular will further inform members and member organizations of the prospectus and/or product description delivery requirements that apply to the Funds.

The Information Circular will also provide guidance with regard to member firm compliance responsibilities when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares as well as applicable Exchange rules. In particular, the Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that: (1) The recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member; and (2) that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer. In addition, the Information Circular will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's prospectus, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

III. Comment Letter

The Commission received one comment letter, submitted on behalf of ProFund Advisors LLC and ProShare Advisors LLC (collectively referred to as ''ProFunds''), which asserted that the listing and trading of the Shares of the Funds by the Exchange would infringe on ProFunds' intellectual property rights. In particular, ProFunds believes that it has a proprietary interest, through a pending patent application, in the process and system for calculating an intra-day indicative value relating to leveraged and inverse exchange traded funds to be purportedly used by the Trust. As a result, the commenter requested that the Commission institute proceedings to disapprove the proposed rule change.[16]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that it has previously approved the original listing and trading of various fund shares that seek to provide investment results that correspond to a specified multiple of the performance, or the inverse of the performance, of an underlying portfolio of securities.[19] The Commission also notes that it has previously approved the listing and trading of exchange-traded funds based on each of the Underlying Indexes.[20]

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. As described above, quotations and last-sale information for the Shares will be disseminated over the CT. In addition, the Exchange will calculate and disseminate through the CT the IIV per Share for each Fund at least every 15 seconds throughout Amex's trading day, as well as other information regarding the value of the Shares. The value of each Underlying Index will also be updated intra-day on a real-time basis as its individual component securities change in price and will be disseminated at least every 15 seconds throughout the trading day. Finally, the Trust's Web site will include important information for each Fund's Shares.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. The Commission notes that the Exchange will obtain a representation from the

[16] *See* ProFunds Letter at 1–2, *supra* note 4.

[17] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Securities Exchange Act Release Nos. 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR–Amex–2006–101) (approving the listing and trading of shares of funds of the Trust based on certain underlying indexes); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR–Amex–2006–41) (approving the listing and trading of shares of other funds of the Trust based on certain underlying indexes); and 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–Amex–2004–62) (approving the listing and trading of shares of funds of the xtraShares Trust based on certain underlying indexes).

[20] *See* Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (SR–Amex–92–18) (approving the listing and trading of portfolio depository receipts (''PDRs''), including receipts based on the S&P 500 Index); 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995) (SR–Amex–94–52) (approving the listing and trading of PDRs based on the S&P 400 Midcap Index); 35532 (March 24, 1995), 60 FR 16518 (March 30, 1995) (SR–CBOE–94–43) (approving the listing and trading of options on the S&P SmallCap 600 Index); 53191 (January 30, 2006), 71 FR 6111 (February 6, 2006) (SR–Amex–2005–061) (approving the listing and trading of options on the Russell Indexes, including the Russell 1000, 2000, and 3000 Indexes); and 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998) (SR–Amex–98–29) (approving the listing and trading of certain Select SPDR exchange-traded funds).

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

Trust (for each Fund), prior to listing, that the NAV per Share for each Fund will be calculated daily and made available to all market participants at the same time.[22] In addition, the Exchange represents that the Web site disclosure of the portfolio composition of each Fund and the disclosure by the Advisor of the IIV File and the PCF will occur at the same time. Moreover, Commentary .02(b) to Amex Rule 1000A–AEMI provides for ''fire wall'' procedures with respect to personnel who have access to information concerning changes and adjustments to the Underlying Index and the implementation of procedures to prevent the use and dissemination of material non-public information regarding the Underlying Index. Further, Commentary .09 to Amex Rule 1000A–AEMI sets forth restrictions on members or persons associated with members who have knowledge of the terms and conditions of certain orders (the execution of which are imminent) to enter, based on such knowledge, an order to buy or sell a Share that is the subject of such orders, an order to buy or sell the overlying option class, or an order to buy or sell any related instrument.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. Amex Rule 1002A(b)(ii) provides that the Exchange will halt trading in the Shares if the circuit breaker parameters of Amex Rule 117 have been reached. In exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) and other relevant factors. In addition, Amex Rule 1002A(b)(ii) provides that, if the IIV or the Underlying Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Amex's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares.

(2) Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular regarding the application of Commentary .06 to Amex Rule 1000A–AEMI to the Funds and the prospectus and/or product description delivery requirements that apply to the Funds. The Information Circular will also provide guidance with regard to member firm compliance responsibilities when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares, as well as applicable Exchange rules. In addition, the Information Circular will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's prospectus, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.

This approval order is based on the Exchange's representations.

Finally, the Commission believes that the commenter's concerns over its proprietary interest in the process and system for calculating an intra-day indicative value relating to leveraged and inverse exchange traded funds to be purportedly used by the Trust do not preclude the Commission from approving the proposed rule change. Specifically, to the extent that the commenter's argument raises a claim of misappropriation or infringement of a protected property right, the Commission believes it is inappropriate for the Commission to attempt to resolve these issues in a proceeding involving the approval of a proposed rule change by a national securities exchange under the federal securities laws. To take such delaying action whenever a third party claim is asserted could stifle Commission review of new products proposed by self-regulatory organizations. The plain language of the U.S. securities laws does not suggest that Congress intended that the Commission attempt, in the context of an approval proceeding for a securities product, to resolve intellectual property right claims that can be pursued elsewhere.[23] Accordingly, the commenter's assertions do not form a basis for the Commission to either disapprove or delay approval of the Exchanges' proposals.[24]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–Amex–2007–74), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–21503 Filed 10–31–07; 8:45 am]

BILLING CODE 8011–01–P

[22] *See* Amex Rule 1002A(a)(ii).

[23] The Commission notes that Congress has enacted an elaborate statutory framework for the establishment, preservation, and protection of intellectual property rights and has established specific federal agencies to administer these laws. Separate state causes of action also may be available to the holders of these proprietary rights as well. The Commission is not required by the Act to make, and has not made, a legal determination of proprietary claims flowing from the Trust's application of the process and system for calculating an intraday indicative value for the Shares of each Fund. This is not to say, however, that the Commission might not separately have a federal interest in the outcome of any proceeding challenging a new product or be willing to express a view regarding such a proceeding in the event a subsequent action provides the Commission opportunity to address these matters, *e.g.*, to protect investors and the public interest.

[24] *See* Securities Exchange Act Release Nos. 36070 (August 9, 1995), 60 FR 42205 (August 15, 1995) (SR–Amex–94–55 and SR–CBOE–95–01) (order approving the listing and trading of warrants on the Deutscher Aktien Index by Amex and the Chicago Board Options Exchange, Incorporated (''CBOE'')); 28475 (September 27, 1990), 55 FR 40492 (October 3, 1990) (SR–Amex–89–16) (order approving the trading by Amex of options on the Japan Index); and 26709 (April 11, 1989), 54 FR 15280 (April 17, 1989) (SR–Phlx–88–07; SR–Amex–88–10; and SR–CBOE–88–09) (order approving the listing of index participations by Amex, CBOE, and the Philadelphia Stock Exchange, Inc.).

[25] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56698; File No. SR–CHX–2007–23]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Allow the Exchange to Open at 8:30 a.m.

October 24, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 2, 2007, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the CHX. 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 CHX proposes to amend its rules allow the CHX to open at 8:30 a.m., without regard to whether the primary market in a particular security is open and to make other associated changes to its rules. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/content/Participant_Information/Rules_Filings.html*, at the CHX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

Under existing rules, the Exchange generally opens for trading in a security once the primary market has done so.[3] If the primary market announces that it will not open, or if the primary market has delayed its opening for reasons other than a regulatory halt, the rules permit two senior CHX officials to open the market.[4]

While these rules provided a reasonable way to handle the opening as the Exchange transitioned from its specialist trading model to its new fully-automated trading model, the Exchange believes that it is no longer appropriate to base its opening time on the actions taken by other markets. Through this filing, the Exchange would amend its rules to permit trading to begin at 8:30 a.m., except for trading in specified exchange-traded funds, which would begin at 7:20 a.m.[5]

In conjunction with this change to the opening time of the Exchange's market, the Exchange would make two other changes to its rules. First, the Exchange would eliminate the opening cross order type. These cross orders, which are designed to execute at the primary market opening price, likely could no longer be effectively executed on the Exchange, once the proposed change is made to the time of the Exchange's opening.[6] In addition, the Exchange would add a new rule that prevents immediate or cancel (''IOC'') market orders from being accepted until either (i) the primary market in a security has opened trading in that security or (ii) two senior officers of the Exchange have determined that it is appropriate for the Exchange to accept IOC market orders.[7] This change is designed to prevent market orders from being executed at prices that are far away from the primary market opening price, when that market ultimately opens.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[8] The proposed rule change is consistent with Section 6(b)(5) of the Act[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by permitting the Exchange to begin trading at 8:30 a.m., without regard to whether the primary market in a particular security is open.

B. Self-Regulatory Organization's Statement on Burden on Competition

CHX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

(ii) As to which the CHX consents, the Commission will:

(A) By order approve the proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. *Solicitation of Comments*

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2007–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

[3] *See* CHX Rules, Article 20, Rule 1(b).

[4] *See* CHX Rules, Article 20, Interpretation and Policy .01.

[5] *See* Proposed CHX Rules, Article 20, Rule 1(b). The Exchange represents that Exchange-traded funds that begin trading at 7:20 a.m. would be announced, from time to time, by the Exchange in a customer service notification or other type of update. The only exchange-traded fund currently trading at 7:20 a.m. is the streetTRACKS® Gold Trust. Telephone conversation between Ellen Neely, President and General Counsel, CHX, Richard Holley III, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, and Sonia Trocchio, Special Counsel, Division, Commission (October 18, 2007).

[6] If the Exchange's systems allow its participants to begin trading before the primary market opens trading in a particular security, an opening cross order (which must execute at the primary market opening price) might violate the protected quotations of other markets. To avoid this potential result, the Exchange believes that it is appropriate to eliminate this order type.

[7] *See* Proposed CHX Rules, Article 1, Rule 2(n) and Article 20, Rule 4(b)(13). For purposes of this rule, another exchange would be considered to have opened for trading in a security when the first trade in that security occurs in that market on or after 8:30 a.m. The Exchange has stated that two senior officers of the Exchange might decide that it is appropriate to allow IOC market orders to be accepted if, for example, the primary market has announced that it will open later than expected, but other markets are open to provide additional liquidity. Telephone conversation between Ellen Neely, President and General Counsel, CHX, Richard Holley III, Senior Special Counsel, Division, Commission, and Sonia Trocchio, Special Counsel, Division, Commission (October 18, 2007).

[8] 15 U.S.C. 78(f)(b).

[9] 15 U.S.C. 78(f)(b)(5).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2007–23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. 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–CHX–2007–23 and should be submitted on or before November 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E7–21455 Filed 10–31–07; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56704; File No. SR-CHX–2007–20]

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Permitting Certain Transactions To Have Post-Trade Anonymity

October 25, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2007, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to allow participants to request post-trade anonymity with respect to certain transactions executed on the Exchange. The text of the proposed rule change is available at *http://www.chx.com,* at the Exchange, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, when a trade occurs on the Exchange, a report is sent to the parties to the trade, or to the participant that submitted the trade on behalf of its customer, confirming details about the transaction, such as the number of shares executed, the price of the execution, and the identities of the parties to the trade. Similar information about the trade is sent to the National Securities Clearing Corporation (''NSCC'') for clearing purposes.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

Through this proposal, CHX's participants would be allowed to request that their identities be kept confidential on trade and clearing reports associated with single-sided executions, except when necessary for regulatory and other identified purposes.[5] CHX would reveal the identity of a participant or the participant's clearing firm: (1) For regulatory purposes or to comply with an order of a court or arbitrator; (2) if the NSCC ceases to act for a participant or a participant's clearing firm and NSCC determines not to guarantee the settlement of a participant's trades; or (3) if both parties to the trade consent.[6]

The Exchange proposes that these anonymity rules apply to all trades executed on the Exchange except the execution of cross orders.[7] The Exchange believes that it would be difficult to provide anonymity protection to cross orders and still provide the participant submitting the order with a sufficiently detailed trade or clearing report to permit it to effectively service its customers' needs.

Under the proposed rule, the Exchange would reveal to a participant, no later than the end of the day on the date an anonymous trade was executed, when that participant has submitted an order that has executed against an order submitted by that same participant.[8] In addition, because CHX's participants would not be able to retain information about the contra parties to anonymous transactions, CHX would keep that information in its original electronic form for the time periods required by

[5] *See* Proposed Article 21, Rule 5(a) and (b). The CHX's trade reporting functionality would be designed to keep confidential the identity of any party to a trade that requests anonymity, but to reveal the identities of other parties to the trade. The clearing functionality, on the other hand, would initially be designed such that, if any party to a transaction requests anonymity, the entire transaction would be considered anonymous. If later changes in the clearing technology permit a more refined outcome, CHX represents that it likely would seek to modify this functionality to mirror the trade reporting design described above.

[6] While the Exchange would keep contra party information confidential for an anonymous trade that was being reviewed through the initial stages of the Exchange's clearly erroneous or systems disruption trade review process, the Exchange would reveal that information upon any request for an appeal from the Exchange's decision on those matters and would make that information available to any participant that seeks to arbitrate a dispute relating to an otherwise anonymous trade. The Exchange believes that it is appropriate to reveal contra party information in these and other similar circumstances pursuant to the proposed ''regulatory purposes'' exception to the anonymity rule. *See* Proposed Article 21, Rule 5(b).

[7] *See* Proposed Article 21, Rule 5(e).

[8] *See* Proposed Article 21, Rule 5(c).

the Commission's broker-dealer record-keeping rules.[9]

The trade reports that NSCC receives from CHX for anonymous trades would contain the identities of the parties to the trade to enable NSCC to conduct its risk management functions, but would contain an indicator noting that the trade was anonymous. NSCC reports issued to CHX participants with respect to these anonymous trades would substitute ''ANON'' for the acronym of the contra party. This handling of the data is designed to allow NSCC to conduct its risk management functions and to settle anonymous trades. If NSCC ceases to act for a member which is the unidentified contra side of any trades received from CHX, the Exchange would have the responsibility to identify to its participants the trades which are with the affected participant.

The Exchange believes that post-trade anonymity would benefit investors because preserving anonymity through settlement limits the potential impact that a participant's identity may have on the trading strategies used, and assumptions made, by other market participants. Other exchanges have implemented similar rule provisions.[10]

The Exchange plans to implement this proposal in two stages—first offering anonymous trade reports and, when all changes have been made to CHX and NSCC systems, allowing that anonymity to continue through the clearing and settlement process. The Exchange anticipates that the anonymous trade reports would be available on or before November 15, 2007, and that the anonymous clearing reports would be available in late 2007 or during the first quarter of 2008.[11]

2. Statutory Basis

CHX stated its belief that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[12] The proposed rule change is consistent with Section 6(b)(5) of the Act [13] because it would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by permitting the Exchange to provide to its participants the same option as they would have on other exchanges [14] to request that their identities be kept confidential on trade and clearing reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) [16] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[17]

Normally, a proposed rule change filed under Rule 19(b)–4(f)(6) may not become operative prior to 30 days after the date of filing.[18] However, Rule 19b–4(f)(6)(iii) under the Act [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it has previously considered substantially similar rule changes providing post-trade anonymity,[20] and CHX's proposed rule change does not raise any new regulatory issues. Accordingly, the Commission designates the proposed rule change to be effective and operative immediately upon filing with the Commission.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[22]

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–CHX–2007–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2007–20. 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/*

[9] *See* Proposed Article 21, Rule 5(d). The Exchange intends to separately seek no-action relief, on behalf of its participants, relating to participants' record-keeping obligations in connection with the anonymous trades. In addition, the Exchange would seek exemptive relief, on behalf of its participants, from certain requirements of Rule 10b-10(a) under the Act. The Exchange will not begin using the post-trade anonymity features until necessary exemptive and no-action relief have been granted.

[10] *See e.g.*, NYSE Arca Equities Rule 7.41 and International Securities Exchange Rule 2117.

[11] *See* note 9, *supra* (noting that the Exchange will seek no-action and exemptive relief before implementing its proposed anonymous trade functionality).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See e.g.*, NYSE Arca Equities Rule 7.41 and International Securities Exchange Rule 2117.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. *See* 17 CFR 240.19b–4(f)(6)(iii). The Commission notes that CHX has satisfied the five-day pre-filing requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] *See* Securities Exchange Act Release Nos. 49786 (May 28, 2004), 69 FR 32087 (June 8, 2004) (SR–PCX–2004–40) and 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (SR–ISE–2006–48).

[21] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78s(b)(3)(C).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CHX. 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–CHX–2007–20 and should be submitted on or before November 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Nancy M. Morris,

Secretary.

[FR Doc. E7–21484 Filed 10–31–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56706; File No. SR–DTC–2007–12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to DTC Opening an Omnibus Account at Euroclear Bank

October 26, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 12, 2007, The Depository Trust Company (''DTC'') 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 primarily by DTC. 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 proposed rule change would allow DTC to open an omnibus account at Euroclear Bank (''ECB'') in order to facilitate the repositioning of inventory between European markets and U.S. markets.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to facilitate, among other things, the efficient processing of cross-border securities transactions between DTC participants and ECB participants. The proposal contemplates the opening of a DTC omnibus account at ECB, which would enable more efficient inventory positioning by participants of DTC and ECB as needed in order to settle securities at ECB and at DTC.

The proposed rule change would accommodate dual listing of certain foreign and domestic securities on both U.S. and European trading platforms. One recent example of such a dual listing is the common stock of NYSE Euronext Group. This U.S.-issued security, which resulted from the merger of the NYSE Group and Euronext, is currently registered, listed, and traded in the U.S. on the New York Stock Exchange (''NYSE'') and in Europe on the Euronext platform. It is eligible for settlement at both DTC and ECB. When traded on the NYSE, the security is cleared and settled in the continuous net settlement (''CNS'') system operated by National Securities Clearing Corporation (''NSCC'') with the associated security movements taking place at DTC. When traded on Euronext, the transaction is eligible for clearance through the facilities of LCHClearnet SA and settlement effected by ECB through the local central securities depository (''CSD''). ECB utilizes the services of a U.S. custodian bank as agent to access DTC for position management as it currently does for all other U.S. issues eligible for settlement at ECB. Participants of ECB and DTC have the ability to reposition their inventory of NYSE Euronext common stock between ECB and DTC through this arrangement.

DTC is proposing a similar arrangement with ECB to allow for custody and repositioning movements of non-U.S. dually-listed securities held on deposit with ECB to the extent such securities are made eligible for listing and trading on U.S. domestic markets. Under DTC's proposal, ECB would act as DTC's custodian for issues on deposit at ECB-controlled CSDs as well as at other CSDs in ECB's subcustody network. This arrangement would enable DTC participants to settle trades in foreign issues in U.S. dollars executed on a U.S. domestic market through the normal clearance and DTC book-entry settlement processes. Further, DTC/ECB common participants would be able to reposition share balances between their DTC account and their ECB account either directly or through their custodian agent to facilitate settlements of trades in these dually-listed foreign issues executed in either marketplace.

Specifically, the new account will allow for European securities that are listed in the U.S. to be custodied by ECB for DTC. The securities will be credited to an account that is maintained by or on behalf of ECB at a European CSD. The process for creating a position at DTC would be initiated by a participant of the European CSD delivering the securities free to ECB's account or to the account of ECB's agent at the European CSD. ECB would credit DTC's account at ECB, and DTC would then credit the securities to the DTC participant account designated by the delivering participant. The securities would then be available for use at DTC (*e.g.*, to satisfy settlements at DTC). To the extent participants need to move position back to Europe to, for among other reasons, facilitate settlements there, the process would be reversed. Under this arrangement, for a security for which physical certificates have been issued, there would be no need for transporting the physical certificates to or from DTC. Any reregistration of securities from one holder to another that is required due to the market practices of any particular market would be processed by the European registrar for the issue. Any position at DTC would be represented by securities that are registered in the name of the European CSD, ECB or ECB's agent.

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

ECB would provide subcustody services such as principal and income collection and corporate action processing on securities held in DTC's omnibus account at ECB in accordance with ECB procedures. DTC in turn would provide its participants with principal and income payment and corporate actions services without the need for its participants to interact directly with ECB.

The primary benefits of the proposed rule change are that it would facilitate the expanded dual listing programs of marketplaces operating in the U.S. and Europe and that it should help to reduce the number of transactions that fail on settlement date because of inefficient methods of inventory repositioning. The realization of these benefits would be consistent with DTC's objectives of providing efficient book-entry clearance and settlement facilities and of reducing risk to DTC participants by immobilizing certificates.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it should reduce risks and associated costs to DTC and ECB participants by streamlining the processing of cross-border securities transactions between U.S. and European entities.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2007–12 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2007–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of DTC. 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–DTC–2007–12 and should be submitted on or before November 23, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–21496 Filed 10–31–07; 8:45 am]

BILLING CODE 8011–01–P

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56709; File No. SR–FINRA–2007–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Exempt From TRACE Reporting Transactions in TRACE-Eligible Securities Resulting From Certain Derivative-Related Transactions

October 26, 2007.

On August 10, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to exempt from reporting to the Trade Reporting and Compliance Engine (''TRACE'') transactions in TRACE-eligible securities resulting from the exercise or settlement of an option or a similar instrument, or the termination or settlement of a credit default swap (''CDS''), other types of swap, or a similar instrument (collectively, ''Derivative-Related Transactions'').[3] The Commission published the proposed rule change for comment in the **Federal Register** on September 21, 2007.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

As described above, FINRA proposed to amend its Rules to exempt transactions in TRACE-eligible securities[5] that are Derivative-Related

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD''s Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007).

[4] *See* Securities Exchange Act Release No. 56439 (September 13, 2007), 72 FR 54087.

[5] *See* NASD Rule 6210 for definition of ''TRACE-eligible security.''

Transactions from the TRACE reporting requirements.[6] FINRA believes that Derivative-Related Transactions should be exempt from TRACE reporting requirements because the information regarding price (and yield) being reported to FINRA and disseminated to the public does not reflect a currently negotiated transaction price. Further, FINRA believes that reporting and dissemination of certain Derivative-Related Transactions does not foster price discovery and may contribute to investor confusion, which FINRA believes is consistent with previously recognized rationale for exempting certain transactions from trade reporting and dissemination. FINRA noted in its proposal that, historically, purchases and sales of equity securities that occurred as a result of the exercise of an over-the-counter option were subject to a similar exemption and were not required to be reported to FINRA.[7]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.[8] In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. FINRA's proposal will relieve its members of the administrative burdens of reporting transactions in TRACE-eligible securities resulting from Derivative-Related Transactions. The Commission agrees with FINRA that requiring members to report such transactions does little to enhance market transparency, because the price of the TRACE-eligible security in this case has been previously negotiated and does not reflect the present market value. The Commission notes that it previously has approved similar proposals that exclude from trade reporting obligations ''transactions effected upon the exercise of an option or any other right to acquire securities at a preestablished consideration unrelated to the current market.'' [10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–FINRA–2007–007), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–21498 Filed 10–31–07; 8:45 am]

BILLING CODE 8011–01–P

[6] The TRACE reporting requirement does not exist in connection with any cash-settled derivative, even if the derivative relates to one or several securities that are TRACE-eligible securities.

[7] *But see* Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (requiring members to report equity trades resulting from the exercise of a physically settled option for purposes of fee calculation, but not for transparency purposes).

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] *See* Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396, n.5 (April 16, 1992) (SR–NASD–91–50).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56708; File No. SR–NASDAQ–2007–078]

Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq's Outbound Routing Broker

October 26, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2007, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. On October 19, 2007, Nasdaq submitted Amendment No. 1 to the proposed rule change. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to codify the functions of its wholly-owned routing broker-dealer Nasdaq Execution Services, LLC (''NES''). The text of the proposed rule change is available at Nasdaq, the Commission's Public Reference Room, and *http://www.nasdaq.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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In July 2006, the Commission approved the integration of Nasdaq's three execution systems—the Nasdaq Market Center, the Brut ECN, and the INET ECN—into a single execution system with routing functionality commonly known as the Nasdaq Single Book (''Single Book'').[5] In coordination with Nasdaq's transition to a registered national securities exchange, Single Book commenced full operation for Nasdaq-listed securities on October 30, 2006, and for other exchange-listed securities on February 12, 2007. Since that time, NES has operated solely and exclusively as the routing broker for the Exchange, and the method for the Exchange to obtain access to better prices displayed in other market centers and, more recently, as required under Regulation NMS. NES is a facility of Nasdaq and operates no trade matching or execution system. Nasdaq states that NES has no customers or users other than the Nasdaq exchange itself. Nasdaq states that this filing merely seeks the adoption of a rule formally codifying this existing and ongoing relationship, and does not alter in any way the current operation of either the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (SR–NASDAQ–2006–001).

or the NES facility, nor interactions between them.

The proposed rule change would establish rules to describe NES's current operations, including that: (1) NES shall route all orders to other market centers as directed by Nasdaq; (2) NES will not engage in any business other than as a outbound router for Nasdaq unless such other business activities are approved by the Commission; (3) NES will operate as a facility, as defined in Section 3(a)(2) of the Act, of Nasdaq; (4) the designated examining authority of NES will be a self-regulatory organization unaffiliated with Nasdaq or any of its affiliates in accordance with Rule 17d–1 of the Act; (5) NES shall be subject to exchange non-discrimination requirements and Nasdaq shall be responsible for filing proposed rule changes related to the operation of, and fees for services provided by NES with the Commission; (6) NES books, records, premises, officers, agents, directors and employees shall be deemed to be Nasdaq books, records, premises, officers, agents, directors and employees of Nasdaq for purposes of, and subject to oversight pursuant to, the Act and shall be subject at all times to inspection and copying by the Commission; and (7) NES use is optional for Nasdaq's market participants.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will immediately codify Nasdaq's relationship with its outbound routing broker.[12] For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[13]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[14]

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied the five-day pre-filing notice requirement.

[11] *Id.*

[12] The Commission notes that Nasdaq's proposal is substantially similar to Rule 2.11 of the National Stock Exchange, Inc. and Rule 17(b) of the New York Stock Exchange LLC.

[13] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on October 19, 2007, the date on which the Exchange submitted Amendment No. 1.

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–NASDAQ–2007–078 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–078. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–078 and should be submitted on or before November 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–21497 Filed 10–31–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56696; File No. SR–NYSEArca–2007–110]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Certain Modifications to the Initial Listing and Trading Standards for Equity Index-Linked Securities

October 24, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I) to permit the listing and trading of Equity Index-Linked Securities[3] where the underlying index consists, in whole or in part, of (1) securities of closed-end management investment companies (''Closed-End Fund Securities'') or (2) investment company units (''ETF Securities''), which, in each case, are registered under the Investment Company Act of 1940 (the ''1940 Act'') and listed on a national securities exchange. In addition, the Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I) to provide for a limited exception, subject to certain proposed conditions, to one of the initial listing standards related to the eligibility of component securities comprising the index underlying Equity Index-Linked Securities. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I) to permit the listing and trading of Equity Index-Linked Securities where the underlying index consists in whole or in part of Closed-End Fund Securities or ETF Securities, which, in each case, are registered under the 1940 Act and are listed on national securities exchange. NYSE Arca Equities Rule 5.2(j)(6)(B)(I) currently permits the Exchange to list and trade, pursuant to Rule 19b–4(e) under the Act,[4] Equity Index-Linked Securities if, among other requirements, all component securities included in the underlying index are either: (1) Securities (other than foreign country securities and American Depository Receipts (''ADRs'')) that are (a) issued by a reporting company under the Act that is listed on a national securities exchange and (b) an ''NMS stock,'' as defined in Rule 600 of Regulation NMS;[5] or (2) foreign country securities or ADRs, subject to certain limitations. The Exchange proposes to amend Rule 5.2(j)(6)(B)(I) to include Closed-End Fund Securities and ETF Securities that are NMS stocks listed on national securities exchanges as components, in whole or in part, in any index underlying an issuance of Equity Index-Linked Securities. The Exchange believes that trading in exchange-listed Closed-End Fund Securities and ETF Securities is subject to the same level of regulation as exchange-listed equity securities. In addition, Closed-End Fund Securities and ETF Securities trade on the same exchange platforms as equity securities registered under the Act and are subject to the same exchange trading rules as equity securities. As such, the Exchange believes that it is appropriate to permit their inclusion as components of indexes underlying Equity Index-Linked Securities.

The Exchange also proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) to incorporate a limited exception to the requirement that 90% of the index's numerical value and at least 80% of the total number of component securities underlying an Equity Reference Asset must meet the then current criteria for standardized options trading set forth in NYSE Arca Rule 5.3. The Exchange proposes that an underlying index would not be subject to such requirement if (1) no underlying component security represents more than 10% of the dollar weight of such index and (ii) such index has a minimum of 20 component securities.

All of the options exchanges apply the same criteria to securities underlying exchange-traded options.[6] These criteria relate primarily to the distribution and trading volume of the securities underlying an option[7] and, as such, the Exchange believes that such criteria are duplicative of the minimum market capitalization and trading volume requirements for securities underlying Equity Index-Linked Securities set forth in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(i) and (ii), respectively. The Exchange notes that the current requirement of NYSE Arca

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE Arca Equities Rule 5.2(j)(6) defines Equity Index-Linked Securities as securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities, also referred to as the ''Equity Reference Asset.'' *See* NYSE Arca Equities Rule 5.2(j)(6).

[4] *See* 17 CFR 240.19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)), the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for such product class.

[5] *See* 17 CFR 242.600(b)(47).

[6] *See, e.g.*, Rule 1009 of the Philadelphia Stock Exchange, Inc.; Rule 5.3 of the Chicago Board Options Exchange, Incorporated; Rule 5.3 of NYSE Arca; and Rule 502 of the International Securities Exchange, LLC.

[7] The rules generally require a minimum of 7,000,000 publicly-held shares, 2,000 holders, a trading volume of at least 2,400,000 shares in the preceding 12 months, and a market price per share of the underlying security of at least $3.00 per share for securities that are ''covered securities,'' as defined in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)), and a market price per share of the underlying security of at least $7.50 for securities that are not ''covered securities.''

Equities Rule 5.2(j)(6)(B)(I)(1)(b)(ii) that relates to minimum trading volume for each component security is more stringent than the trading volume requirement related to options trading.[8] Notwithstanding the foregoing, while a significant number of listed equity securities meet the minimum market capitalization and trading volume requirements for components of equity indexes under NYSE Arca Equities Rule 5.2(j)(6), the Exchange represents that many do not meet the current criteria for standardized options trading. The Exchange believes that the explicit market capitalization and trading volume requirements of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(i) and (ii), respectively, are sufficient to ensure that any component security comprising an Equity Reference Asset underlying a series of Equity Index-Linked Securities will have an adequate liquid trading market. In addition, the Exchange believes that, by requiring that both proposed conditions to NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(v) (*i.e.*, enhancing concentration limits for component securities and increasing the minimum number of component securities) be met in order to avail of the proposed exemption to such rule, the proposal would significantly reduce the possibility of manipulation of the index. Based on the foregoing, the Exchange believes that the protection of requiring such securities to be qualified for options trading is unnecessary.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NYSE Arca consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–110 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–110 and should be submitted on or before November 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E7–21454 Filed 10–31–07; 8:45 am]

BILLING CODE 8011–01–P

[8] NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(ii) requires that each component security must have trading volume in each of the last six months or not less than 1,000,000 shares per month, except that for each of the lowest dollar weighted component securities in the index that, in the aggregate, account for no more than 10% of the dollar weight of the index, the trading volume shall be at least 500,000 shares per month in each of the last six months. In contrast, the options criteria for underlying securities generally require a minimum trading volume (in all markets in which the underlying security is traded) of 2,400,000 shares in the preceding twelve months, as stated above.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5980]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Algeria Youth Leadership Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–08–12.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: January 3, 2008.

Executive Summary: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the Algeria Youth Leadership Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C.

501(c)(3) will submit proposals to recruit and select high school students in Algeria, and conduct a program in Algeria and the United States approximately six weeks in length that will focus on themes of leadership development, respecting diversity, and civic education.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

The Algeria Youth Leadership Program has been established to offer youth from Algeria an opportunity to interact with their American peers and jointly develop their leadership skills. The Office of Citizen Exchanges' Youth Programs Division, through the Algeria Youth Leadership Program, will bring Algerian and American exchange participants (ages 15–17) together in the United States for approximately four weeks in the summer of 2008. The Algerian participants will also undergo two (2) weeks of intensive English language instruction before their departure to the United States.

Components of the program will include: (A) Two (2) weeks of intensive English language instruction in Algeria for the Algerian participants; (B) a pre-departure and post-arrival orientation for the Algerian students, each being no more than two (2) days in length; (C) approximately two (2) weeks of structured activities in U.S. communities when the Algerian students will have homestays with American families; (D) a week at a summer program site for both the Algerians and Americans; (E) a week-long civic education workshop for both the Algerians and Americans, and (F) a one-day wrap-up session at the conclusion of the program for both the Algerian and American participants. Follow-on activities for alumni will be designed to reinforce the lessons learned on the exchange and enable the alumni to apply their new skills in their home communities.

The grantee organization will be responsible for the entire cycle of the program to include: Recruitment and selection of Algerian and American students; management of travel documents, international airline reservations for Algerian students and up to two (2) adult escorts, who will accompany the Algerian students and participate in the program; domestic transportation for Algerian and American participants; preparation and oversight of all programmatic components in the United States; provision of follow-on activities for Algerian alumni in their home country, and, to the extent possible, for American alumni in the United States.

The grantee organization must recruit and select the Algerian exchange participants in consultation with the Public Affairs Section at the U.S. Embassy in Algiers. The grantee organization must make arrangements for the students to take part in intensive English language instruction before their departure to the United States. English language classes should be no longer than two (2) weeks in duration.

The grantee organization must also recruit and select American high school students. Preference will be given to a nationwide recruitment plan, though a regional recruitment plan may also be considered.

The grantee organization must provide the Algerian participants with pre-departure and post-arrival orientations to prepare them for both the content and the logistics of the exchange. The American students must receive pre-program information on content and logistics.

A successful project will be one that nurtures a cadre of students to be actively engaged in their schools and communities upon their return home, and that equips students with the knowledge, skills, and confidence to do so. By the end of the program, Algerian students will have developed relationships with their peers in the United States and within their delegation; developed their own impression of the United States; strengthened their English language skills; and obtained an understanding of how American democracy operates on a daily basis. The American students will develop an appreciation for another culture and learn more about Algerian society and traditions through their relationships with the Algerian participants.

Goals

- To develop leadership, civic responsibility, and commitment to community service among youth;
- To strengthen the English language skills of the Algerian participants;
- To foster relationships between Americans and Algerians with a focus on respect for ethnic, socioeconomic and religious diversity; and
- To promote mutual understanding between the people of the United States and the people of Algeria.

Applicants should identify their own specific program objectives, as well as measurable outcomes based on the program goals and specifications provided in this solicitation. Applicants should outline their capacity for doing projects of this nature, focusing on three areas of competency: (1) Provision of leadership and civic education programming, (2) age-appropriate programming for youth, and (3) prior work with individuals from the region.

Participants

Selection of Algerian students must focus on teenagers, aged 15–17, from across the country who represent the full diversity of the Algerian population. They should demonstrate an interest in the project themes and exhibit maturity, flexibility, and open-mindedness.

The program must also include American students, aged 15–17, who demonstrate an interest in the project themes and exhibit maturity, flexibility, and open-mindedness. Care should be taken to ensure a recruitment process that targets a diverse pool of Americans from across the county (or from throughout a region).

Algerian adult participants will be educators or leaders of non-governmental organizations that work with youth. They should be available to support the participants during the course of each component of the exchange.

There will be at least 20 participants from Algeria, plus the two adult escorts. They will be joined by a delegation of at least 10 American students for the camp and civic education components. Applicants must specify the size and composition of each country delegation in their proposal.

U.S. Program

The approximate six-week program will begin in the United States with a two-day orientation for the Algerian participants and wrap up with a one-day debriefing session for both the Algerian and American students. The camp and civic education experiences will allow Algerian and American students to build relationships, and should combine both recreational and substantive elements addressing such topics as participatory democracy, community service, and respect for diversity. The civic education workshop should include briefings, simulations, and discussions on citizen participation and the fundamentals of the American democratic system of government. During the time that the Algerian students are living with American host families, their scheduled events should include a structured and sustained mix of workshops, simulations and role-playing, meetings, tours, training, and social time among their peers.

The primary components are described in more detail in the Project Objectives, Goals and Implementation (POGI) document.

II. Award Information

Type of Award: Grant Agreement.
Fiscal Year Funds: FY–2008, pending availability of funds.
Approximate Total Funding: $225,000.
Approximate Number of Awards: 1.
Approximate Average Award: $225,000.
Anticipated Award Date: Pending availability of funds, March 10, 2008.
Anticipated Project Completion Date: Approximately 18 months after start date.
Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount up to $225,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact Matt O'Rourke, ECA/PE/C/PY, Room M23, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (t) 202–453–8170, (f) 202–453–8169, *ORourkeMM@state.gov* to request a Solicitation Package.

Please refer to the Funding Opportunity Number ECA/PE/C/PY–08–12 located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. See section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation. It also contains the POGI, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Matt O'Rourke and refer to the Funding Opportunity Number ECA/PE/C/PY–08–12 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov website at *http://www.grants.gov*. Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory PSI document and the POGI for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence To All Regulations Governing The J Visa.

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, *Telephone:* (202) 203–5029, *FAX:* (202) 453–8640.

IV.3d.2. Diversity, Freedom and Democracy Guidelines.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation.

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.
2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $225,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity for clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: January 3, 2008.

Reference Number: ECA/PE/C/PY–08–12.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory PSI of the solicitation document.

IV.3f.1. Submitting Printed Applications. Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original, one fully-tabbed copy, and six copies of the application with Tabs A–E (for a total of 8 copies) should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, *Ref.:* ECA/PE/C/PY–08–12, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the executive summary, proposal narrative, budget section, and any important appendices as e-mail attachments in Microsoft Word and Excel to the following e-mail address: *ORourkeMM@state.gov.* In the e-mail message subject line, include the name of the applicant organization and the partner country.

IV.3f.2. Submitting Electronic Applications. Applicants have the option of submitting proposals electronically through *Grants.gov http://www.grants.gov*. Complete solicitation packages are available at *Grants.gov* in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*). Several of the steps in the *Grants.gov* registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through *Grants.gov.* Direct all questions regarding *Grants.gov* registration and submission to: *Grants.gov* Customer Support, *Contact Center Phone:* 800–518–4726, *Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time, *e-mail: support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the *Grants.gov* site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the *grants.gov* system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from *grants.gov* upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the *Grants.gov* web portal to ensure that proposals have been received by *Grants.gov* in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

Review Criteria

Please see the review criteria in the accompanying POGI document.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements:

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Interim reports, as required in the Bureau grant agreement.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Matt O'Rourke, Office of Citizen Exchanges, ECA/PE/C/PY, Room M23, ECA/PE/C/PY–08–12, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, (t) 202–453–8170, (f) 202–453–8169, *ORourkeMM@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–08–12.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: October 25, 2007.

C. Miller Crouch,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7–21562 Filed 10–31–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5978]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: The Future Leaders Exchange Program: Host Family and School Placement

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/PY–08–10.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: December 14, 2007.

Executive Summary: The Youth Programs Division of the Bureau of Educational and Cultural Affairs announces an open competition for the placement component of the Future Leaders Exchange (FLEX) program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to recruit and select host families and schools for high school students between the ages of 15 and 17 from countries of the former Soviet Union, hereafter referred to as Eurasia. This solicitation and the activities to which it refers, applies only to FLEX students from the following Eurasian countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

In addition to identifying schools and screening, selecting, and orienting families, organizations will be responsible for: (1) Providing English language enhancement activities for a small percentage of students who are specially identified; (2) orienting all students at the local level; (3) providing support services for students; (4) arranging enhancement activities and skill-building opportunities; (5) assessing student performance and progress; (6) providing mid-year programming and re-entry training; and (7) evaluating project success. Preference will be given to those organizations that offer participants opportunities to develop leadership skills and raise their awareness of tolerance and social justice through community activities and networks. The award of grants and the number of students who will participate is subject to the availability of funding in fiscal year 2008.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The Future Leaders Exchange Program seeks to provide approximately 1,100 high school students from Eurasia with an opportunity to live in the United States for the purpose of promoting democratic values and institutions throughout their home countries. Participants will reside with American host families and attend high school during the 2008–09 academic year.

During the year, FLEX participants will be engaged in a variety of activities, such as community and school-based programs, skill-building workshops, and cultural events. Academic year 2008/2009 will be the fifteenth year of the FLEX program, with more than 17,000 students having been awarded scholarships.

Goals: The goals of the program are (1) to promote mutual understanding and foster relationships between the people of Eurasia and the United States; (2) to assist the successor generation of Eurasian countries in developing the qualities it will need to lead transformation efforts in the 21st century; and (3) to promote democratic values and civic responsibility.

Considering the specific focus of the FLEX program, the following outcomes will indicate a successful project:

1. Participants will acquire an understanding of important elements of a civil society. This includes concepts such as volunteerism, the idea that American citizens can and do act at the grassroots level to deal with societal problems, and an awareness of and respect for the Rule of Law.

2. Participants will acquire an understanding of a free market economy and private enterprise, including an awareness of privatization and an appreciation of the role of the entrepreneur in economic growth.

3. Participants will develop an appreciation for American culture, an understanding of the diversity of American society, and increased tolerance and respect for others with differing views and beliefs.

4. Participants will interact with Americans and generate enduring ties.

5. Participants will teach Americans about the cultures of their home countries.

6. Participants will gain leadership capacity that will enable them, as FLEX alumni, to initiate activities in their home countries that focus on development and community service.

Objectives: The immediate objectives of the FLEX program are:

- To place approximately 1,100 pre-selected high school students from 11 Eurasian countries in qualified, well-motivated host families;
- To place students in schools that have been accredited by the respective state departments of education;
- To expose program participants to American culture and democracy that will enable them to attain a broad view of U.S. society and culture;
- To provide appropriate venues for program participants to share their culture, lifestyle and traditions with U.S. citizens;
- To provide participants with leadership training and opportunities that foster skills they can take back with them and use in their home countries; and
- To provide activities that will increase and enhance students' understanding of the importance of tolerance and respect for the views and beliefs of others in a civil society.

Other Components: One organization has already been awarded a grant to perform the following functions: recruitment and selection of Eurasian students; assistance in documentation and preparation of DS–2019 visa forms; preparation of cross-cultural materials; pre-departure orientation; international travel from home to host community and return; facilitation of ongoing communication between the natural parents and placement organization, as needed; maintenance of a student database and provision of data to the U.S. Department of State; and ongoing follow-up with alumni after their return to Eurasia.

Another organization is currently responsible for supporting students with disabilities. This involves a pre-program orientation and a year-end reentry training, as well as ongoing support throughout the year in order to help them cope with challenges specific to their circumstances. Placement organizations will be in direct communication with this organization, especially since some students with disabilities may need supplementary independence skills training early on in the program.

Guidelines: Applicants are requested to submit a narrative outlining a comprehensive strategy for the administration and implementation of the placement component of the FLEX program that includes the following responsibilities:

(1) recruitment, screening, selection, and Eurasia/FLEX-specific orientation of host families;

(2) Enrollment in an accredited school;

(3) Post-arrival orientation for participants;

(4) Placement of a small number of students with disabilities;

(5) Pre-program specialized English language tutoring for pre-selected students who require focused preparation for their academic year;

(6) Specialized training of local staff and volunteers to work with FLEX students from Eurasia;

(7) Preparation and dissemination of materials to students pertaining to the respective placement organization;

(8) Troubleshooting;

(9) Monitoring of the students' performance;

(10) Quarterly evaluation of the organization's success in achieving program goals;

(11) Mid-year orientations to assess progress; and

(12) Eurasia-specific re-entry training to prepare students for readjustment to their home environments.

Applicants must request a grant for the placement of at least 30 students; there is no maximum number of students who may be placed by one organization. Placements may be in any region of the United States. Strong preference will be given to organizations that choose to place participants in clusters of at least three students. Please refer to the Solicitation Package for details on essential program elements, permissible costs, and criteria used to select and place students. We anticipate grants beginning no later than April 2008, subject to the availability of funds.

Most participants arrive in their host communities during the month of August and remain for 10 or 11 months until their departure during the period mid-May to late June 2009. Students with disabilities and students requiring supplementary English language instruction may arrive at the end of July.

Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Applicants should submit the health and accident insurance plans they intend to use for students on this program. If use of a private plan is proposed, the State Department will compare that plan with the Bureau plan and make a determination of which will be applicable.

II. Award Information

Type of Award: New Grant Agreement.

Fiscal Year Funds: FY 2008.

Approximate Total Funding: $7,150,000 pending availability of funds.

Approximate Number of Awards: 10–15 grants.

Average Grant Award: Dependent on the number of proposed students, total amount not to exceed $6,500 per student; a minimum award is approximately $195,000.

Anticipated Award Date: April 2008, pending availability of funds.

Anticipated Project Completion Date: August 2009.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew grants awarded under this competition for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110 (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Since a minimum award is approximately $195,000 to support program and administrative costs required to implement this exchange program, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact The Office of Youth Programs, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone (202) 203–7513, and fax (202) 203–7529, e-mail Linda Beach at *BeachLF@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–08–10 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from *www.grants.gov.* Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Michele Peters (*PetersML@state.gov*) and refer to the Funding Opportunity Number (ECA/PE/C/PY–08–10) at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov.* Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent per the instructions under IV.3e. ''Application Deadline and Methods of Submissions'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory PSI document and the POGI for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1. Adherence to All Regulations Governing the J Visa. The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss its record of compliance with 22 CFR part 62 *et seq.*, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3.d.2. Diversity, Freedom And Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Monitoring: Proposals must include a plan to monitor and report on the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique, plus a description of a methodology that will be used to link outcomes to original project objectives. The Bureau expects that the grantee will track participants and be able to respond to key monitoring questions throughout the year, particularly on effects of the program on program participants, their host families and communities.

Successful monitoring depends heavily on setting clear goals and outcomes at the outset of a program. Your monitoring plan should include a description of your project's objectives and how and when you intend to measure these outcomes. You should also show how your project objectives link to the goals of the program described in this RFGP.

Overall, the quality of your monitoring plan will be judged on how well it specifies successes and challenges. Grantees will be required to provide reports analyzing their monitoring findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Evaluation: The Bureau's Office of Policy and Evaluation will conduct evaluations of the FLEX program through E–GOALS, its online system for surveying program participants and collecting data about program performance. These evaluations assist ECA and its program grantees in meeting the requirements of the Government Performance Results Act (GPRA) of 1993. This Act requires federal agencies to measure the results of their programs in meeting pre-determined performance goals and objectives.

Please see specific responsibilities in the accompanying POGI document.

IV.3e. Please take the following information into consideration when preparing your budget:

1V.3e.1. Applicants must submit a comprehensive budget for the entire program. Per capita costs are not to exceed $6,500 per participant. The budget must reflect costs for a minimum of 30 participants. Please indicate clearly the number of students funded. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification

IV.3e.2. Allowable costs for the program and additional budget guidance are outlined in detail in the POGI document.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: December 14, 2007.

Reference Number: ECA/PE/C/PY–08–10.

Methods of Submission

Applications may be submitted in one of two ways:

(1) In hard copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.* Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory PSI of the solicitation document.

IV.3f.1. Submitting Printed Applications. Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM.''

The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, *Ref.:* ECA/PE/C/PY–08–10, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory PSI of the solicitation document.

IV.3f.2. Submitting Electronic Applications. Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at

Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with *Grants.gov*.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible. Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants) resides with the Bureau's Grants Officer.

Review Criteria

1. *Program Planning/Ability to Achieve Program Objectives:* Your proposal narrative should exhibit originality, substance, and relevance to the Bureau's mission, as well as to the goals of the FLEX program. Reviewers will assess the degree to which proposals engage participants in community activities that involve skills development and leadership training. Given the upcoming U.S. elections, activities that expose and educate students about the American election process should be included. A detailed agenda and work plan should adhere to the program overview and guidelines described in the solicitation package. With respect to anticipated program outcomes, reviewers will assess the degree to which the proposed outcomes of the project are realistic and measurable. Strategies should creatively utilize and reinforce activities to ensure an efficient use of program resources.

2. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, host families, schools, program venue and program evaluation) and program content (orientations, program meetings, resource materials and follow-up activities).

3. *Organization's Record/Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. In assessing institutional capacity, reviewers will assess the applicant and its partners to determine if they offer adequate resources, expertise, and experience to fulfill program objectives. Partner activities should be clearly defined. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting and J–1 Visa requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. *Multiplier Effect:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Reviewers will assess ways in which proposals include innovative ideas to involve students in their U.S. communities and substantive plans to prepare them for their role as active, effective FLEX alumni.

5. *Project Monitoring:* Proposals should include a plan to monitor the activity's success, both as the activities unfold and at the end of the program. Reviewers will assess your plans to monitor student progress and program activities, particularly in regard to intended outcomes indicated in your proposal. Successful applicants will be expected to submit quarterly reports, which should be included as an inherent component of the work plan. Proposals should also specify ways in which students will be encouraged and monitored to ensure they complete the mandatory end-of-the-year surveys administered through the E–GOALS system.

6. *Cost-effectiveness/Cost sharing:* Reviewers will analyze the budget for clarity and cost-effectiveness. They will also assess the rationale of the proposed budget and whether the allocation of funds is appropriate to complete tasks outlined in the project narrative. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Preference will be given to organizations whose proposals demonstrate a quality, cost-effective program.

VI. Award Administration Information

VI.1a. Award Notice: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements:

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''
Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''
OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.
OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.
OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) Quarterly program and financial reports which should include both quantitative and qualitative data you have available.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required.

VII. Agency Contacts

For questions about this announcement, contact: Michele Peters, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. Telephone: (202)203–7517 Fax number: (202) 203–7529, Internet address: *PetersML@state.gov.* All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–08–10.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: October 24, 2007.

C. Miller Crouch,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7–21551 Filed 10–31–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5979]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: International Sports Programming Initiative

Announcement Type: New Grant.

Funding Opportunity Number: ECA/PE/C/WHA–EAP–08–16.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Application Deadline: January 25, 2008.

Executive Summary: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the International Sports Programming Initiative. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals for projects designed to enhance and improve the infrastructure of youth sports programs in select countries in Africa, East Asia, the Near East and North Africa, South Asia and the Western Hemisphere. The focus of all programs must be on reaching out to youth ages 8–18. Programs designed to train elite athletes will not be considered. Eligible countries are: Africa (Kenya, South Africa, Nigeria, Senegal or the trans-Sahara for a Francophone regional project (eligible countries included in this regional project must include one country from Morocco, Algeria and Tunisia as well as one country from Chad, Senegal, Niger, Mauritania and Chad); for East Asia: China, Malaysia, Philippines, Thailand and Vietnam; for the Near East and North Africa: Algeria, Egypt, Jordan, Morocco, Oman, Syria, Tunisia, West Bank and Yemen; for South Asia: Bangladesh, India; for the Western Hemisphere: Bolivia, Brazil, Ecuador, Nicaragua and Venezuela.

For countries that are not designated in the RFGP or that address more than one country unless specifically noted, will be deemed technically ineligible and will receive no further consideration in the review process.

For the purposes of this competition, eligible regions are Africa, East Asia, the Near East, North Africa, South Asia and the Western Hemisphere. No guarantee is made or implied that grants will be awarded in all themes or for all countries listed.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

Overview: The Office of Citizen Exchanges welcomes proposals that directly respond to the following thematic areas. Given budgetary limitations, projects for themes and other not listed below will not be eligible for consideration under the FY–2008 International Sports Program Initiative Competition. Eligible countries to be are:

Africa: Kenya, South Africa, Mali, Nigeria and Senegal or the trans-Sahara for a Francophone regional project (eligible countries included in this regional project must include one country from Morocco, Algeria and Tunisia as well as one country from Mali, Senegal, Niger, Mauritania and Chad);

East Asia: China, Malaysia, Philippines, Thailand and Vietnam;

Near East and North Africa: Algeria, Egypt, Jordan, Morocco, Oman, Syria, Tunisia, West Bank and Yemen;

South Asia: Bangladesh, India;

Western Hemisphere: Bolivia, Brazil, Ecuador, Nicaragua and Venezuela. Preference will be given to single country projects with the exception of the trans-Sahara regional project and the Western Hemisphere.

Themes

(1) Training Sports Coaches

The World Summit on Physical Education (Berlin, 1999) stated that a ''quality physical education helps children to develop the patterns of interest in physical activity, which are essential for healthy development and which lay the foundation for healthy, adult lifestyles.'' Coaches are critical to the accomplishment of this goal. A coach not only needs to be qualified to provide the technical assistance required by young athletes to improve, but must also understand how to help a young person to discover how success in athletics can be translated into achievement in the development of life skills and in the classroom.

Through seminars and outreach, projects submitted in response to this theme will aim at aiding youth, secondary school and university coaches in the target countries in the development and implementation of appropriate training methodologies. The goal is to ensure the optimal technical proficiency among the coaches participating in the program while also emphasizing the role sports can play in the long-term economic well-being of youth.

(2) Youth Sports Management Exchange

Exchanges funded under this theme will enable American and foreign youth sport coaches, adult sponsors, and sports association officials to share their experience in managing and organizing youth sports activities, particularly in financially challenging circumstances, and will advance cross-cultural understanding of the role of sports as a significant factor in educational success. Americans are in a good position to convey to foreign counterparts the importance of linking success in sports to educational achievement and demonstrate how these two factors contribute to short-term and long-term economic prospects.

(3) Youth With Disability

Exchanges supported by this theme are designed to promote and sponsor sports, recreation, fitness and leisure events for children and adults with physical disabilities. Project goals include improving the quality of life for people with disabilities by providing affordable, inclusive sports and recreational experiences that build self-esteem and confidence, enhancing active participation in community life and making a significant contribution to the physical and psychological health of people with disabilities. Proposals under this theme aim to demonstrate that physically and developmentally challenged individuals can be included in the sports and recreation opportunities in their communities and to develop opportunities for doing so.

(4) Sports and Health

Projects funded under this category will focus on effective and practical ways to use sports personalities and sports health professionals to increase awareness among young people of the importance of following a healthy lifestyle to reduce illness, prevent injuries and speed rehabilitation and recovery. Emphasis will be on the responsibility of the broader community to support healthy behavior. The project goals are to promote and integrate scientific research, education, and practical applications of sports medicine and exercise science to maintain and enhance physical performance, fitness, health, and quality of life. (Actual medical training and dispensing of medications are outside the purview of this theme.)

Audience

Representatives from government and non-governmental organizations, coaches, community leaders, and youth audiences.

Ideal Program Model

The following are suggested program structures that might be arranged in any order:

• A U.S. grantee identifies U.S. citizens to conduct a multi-location, in-country program, including clinics and training sessions for government officials (Ministry of Sports and Ministry of Education); coaches (adult and youth); NGO representatives, including representatives from a relevant sports federation; community officials, including local authorities associated with recreational facilities; youth audiences (equal numbers of boys and girls); elected local government officials; and sports management professionals to support one of the themes listed.

• An in-country partner (a local university, government agency or other appropriate organization, such as a relevant sports federation) co-hosts an activity with the U.S. grantee institution, and participate in the selection of participants for the U.S. program.

• A U.S. program includes site visits designed to provide participants with background information on U.S. approaches to the themes listed in the announcement; internships with appropriate sports-related organizations and at community-based recreational facilities; and a one-day debriefing and evaluation.

• U.S. experts conduct who served as internship hosts or coordinated site implement an in-country program.

• Participants in the U.S. program design the project and serve as co-presenters.

• Materials translates into the target language, small grants for projects designed to expand the exchange experience and support for the development of alumni associations might also be considered.

• Encourage all participants to enroll in the Bureau of Education and Cultural Affairs' alumni Web site.

Participant Selection

Proposals should clearly describe the types of persons that will participate in the program, as well as the participant recruitment and selection processes. For programs that include U.S. internships, applicants should submit letters of support from host institutions. In the selection of foreign participants, the Bureau and U.S. embassies retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. When U.S. participants are selected, grantee institutions must provide their names and brief biographical data to the Office of Citizen Exchanges. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States.

II. Award Information

Type of Award: Grant Agreement.
Fiscal Year Funds: 2008.
Approximate Total Funding: $2,000,000.
Approximate Number of Awards: 15–18.
Approximate Average Award: $175,000.
Floor of Award Range: $60,000.
Ceiling of Award Range: Approximately $175,000.
Anticipated Award Date: Pending availability of funds, August 31, 2008.
Anticipated Project Completion Date: September 30, 2009–June 30, 2010.

Projects under this competition may range in length from one to three years depending on the number of project components, the country/region targeted and the extent of the evaluation plan proposed by the applicant. The Office of Citizen Exchanges strongly encourages applicant organizations to plan enough time after project activities to measure project outcomes. Please refer to the Program Monitoring and Evaluation section, item IV.3d.3 below, for further guidance on evaluation.

III. Eligibility Information

III.1. Eligible Applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. Cost sharing is an important element of the ECA-grantee institution relationship, and it demonstrates the implementing organization's commitment to the program. Cost sharing is included as one criterion for grant proposal evaluation. Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be indicated in the budget request. Proposal budgets that do not reflect cost sharing will be deemed less competitive under the Cost Effectiveness and Cost Sharing criterion (item V.1 below). When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements:

(a) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

(b) *Technical Eligibility:* In addition to the requirements outlined in the Proposal Submission Instructions (PSI) technical format and instructions document, all proposals must comply with the following or they will result in your proposal being declared technically ineligible and given no further consideration in the review process.

The Office does not support proposals limited to conferences or seminars (i.e., one- to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition.

No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine professional association meetings in the United States.

The Office of Citizen Exchanges does not support academic research or faculty or student fellowships. Applicants may not submit more than one (1) proposal for this competition. Organizations that submit proposals that exceed these limits will result in having all of their proposals declared technically ineligible, and none of the submissions will be reviewed by a State Department panel. Proposals that target countries/regions or themes not listed in the RFGP will be deemed technically ineligible.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact the Office of Citizen Exchanges, ECA/PE/C, Room 220, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: 202–453–8163; fax: 202–453–8168; or e-mail *harveyrh@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number (ECA/PE/C/WHA–EAP–08–16) located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3F for further information.

The Solicitation Package contains the PSI document that consists of required application forms, and standard guidelines for proposal preparation.

Please specify the Bureau Program Officer listed for each region and theme above and refer to the Funding Opportunity Number (ECA/PE/C/WHA–EAP–08–16) located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* from the grants.gov Web site at *http://www.grants.gov.* Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be sent per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory PSI document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62, *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62, *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation: Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

Participant satisfaction with the program and exchange experience.

Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. For this competition, requests should not exceed approximately $175,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

Travel. International and domestic airfare; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs.

2. Per Diem. For U.S.-based programming, organizations should use the published Federal per diem rates for individual U.S. cities. Domestic per diem rates may be accessed at: *http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/perd03d.html*. ECA requests applicants to budget realistic costs that reflect the local economy and do not exceed Federal per diem rates. Foreign per diem rates can be accessed at: *http://www.state.gov/m/a/als/prdm/html.*

3. Interpreters. For U.S.-based activities, ECA strongly encourages applicants to hire their own locally based interpreters. However, applicants may ask ECA to assign State Department interpreters. One interpreter is typically needed for every four participants who require interpretation. When an applicant proposes to use State Department interpreters, the following expenses should be included in the budget: Published Federal per diem rates (both ''lodging'' and ''M&IE'') and ''home-program-home'' transportation in the amount of $400 per interpreter. Salary expenses for State Department interpreters will be covered by the Bureau and should not be part of an applicant's proposed budget. Bureau funds cannot support interpreters who accompany delegations from their home country or travel internationally.

4. Book and Cultural Allowances. Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Honoraria rates should not exceed $250 per day. Organizations are encouraged to cost-share rates that would exceed that figure. Subcontracting organizations may also be employed, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Such sub-grants should detail the division of responsibilities and proposed costs, and subcontracts should be itemized in the budget.

6. Room rental. The rental of meeting space should not exceed $250 per day. Any rates that exceed this amount should be cost shared.

7. Materials. Proposals may contain costs to purchase, develop and translate materials for participants. Costs for high quality translation of materials should be anticipated and included in the budget. Grantee organizations should expect to submit a copy of all program materials to ECA, and ECA support should be acknowledged on all materials developed with its funding.

8. Equipment. Applicants may propose to use grant funds to purchase equipment, such as computers and printers; these costs should be justified in the budget narrative. Costs for furniture are not allowed.

9. Working meal. Normally, no more than one working meal may be provided during the program. Per capita costs may not exceed $15–$25 for lunch and $20–$35 for dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. When setting up a budget, interpreters should be considered ''participants.''

10. Return travel allowance. A return travel allowance of $70 for each foreign participant may be included in the budget. This allowance would cover incidental expenses incurred during international travel.

11. Health Insurance. Foreign participants will be covered during their participation in the U.S. program by the ECA-sponsored Accident and Sickness Program for Exchanges (ASPE), for which the grantee must enroll them. Details of that policy can be provided by the contact officers identified in this solicitation. The premium is paid by ECA and should not be included in the grant proposal budget. However, applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. Wire transfer fees. When necessary, applicants may include costs to transfer funds to partner organizations overseas. Grantees are urged to research applicable taxes that may be imposed on these transfers by host governments.

13. In-country travel costs for visa processing purposes. Given the requirements associated with obtaining J–1 visas for ECA-supported participants, applicants should include costs for any travel associated with visa interviews or DS–2019 pick-up.

14. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested ECA grant funds will be more competitive under the cost effectiveness and cost sharing criterion, per item V.1 below. Proposals should show strong administrative cost sharing contributions from the applicant, the in-country partner and other sources.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: Thursday, January 25, 2008.

Reference Number: ECA/PE/C/WHA–EAP–08–16.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *www.grants.gov.* Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory PSI of the solicitation document.

IV.3f.1 Submitting Printed Applications: Due to heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will not notify you upon receipt of application. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and ten copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/WHA–EAP–08–16, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory PSI of the solicitation document.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, *Contact Center Phone:* 800–518–4726, *Business Hours:* Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will not notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

IV.3h. Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. Embassy for its review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program Planning and Ability to Achieve Objectives:* Program objectives should be stated clearly and should reflect the applicant's expertise in the subject area and region. Objectives should respond to the topics in this announcement and should relate to the current conditions in the target country/countries. A detailed agenda and relevant work plan should explain how objectives will be achieved and should include a timetable for completion of major tasks. The substance of workshops, internships, seminars and/or consulting should be described in detail. Sample training schedules should be outlined. Responsibilities of proposed in-country partners should be clearly described. A discussion of how the applicant intends to address language issues should be included, if needed.

2. *Institutional Capacity:* Proposals should include (1) the institution's mission and date of establishment; (2) detailed information about proposed in-country partner(s) and the history of the partnership; (3) an outline of prior awards—U.S. government and/or private support received for the target theme/country/region; and (4) descriptions of experienced staff members who will implement the

program. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country/countries. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The Bureau strongly encourages applicants to submit letters of support from proposed in-country partners.

3. *Cost Effectiveness and Cost Sharing:* Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Proposals whose administrative costs are less than twenty-five (25) percent of the total funds requested from the Bureau will be deemed more competitive under this criterion. Applicants are strongly encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, including contributions from the applicant, proposed in-country partner(s), and other sources should be included in the budget request. Proposal budgets that do not reflect cost sharing will be deemed not competitive in this category.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the PSI and the Diversity, Freedom and Democracy Guidelines section, Item IV.3d.2, above for additional guidance.

5. *Post-Grant Activities:* Applicants should provide a plan to conduct activities after the Bureau-funded project has concluded in order to ensure that Bureau-supported programs are not isolated events. Funds for all post-grant activities must be in the form of contributions from the applicant or sources outside of the Bureau. Costs for these activities must not appear in the proposal budget, but should be outlined in the narrative.

6. *Program Monitoring and Evaluation:* Proposals should include a detailed plan to monitor and evaluate the program. Program objectives should target clearly defined results in quantitative terms. Competitive evaluation plans will describe how applicant organizations would measure these results, and proposals should include draft data collection instruments (surveys, questionnaires, etc) in Tab E. See the ''Program Monitoring/Evaluation'' section, item IV.3d.3 above for more information on the components of a competitive evaluation plan. Successful applicants (grantee institutions) will be expected to submit a report after each program component concludes or on a quarterly basis, whichever is less frequent. The Bureau also requires that grantee institutions submit a final narrative and financial report no more than 90 days after the expiration of a grant. Please refer to the ''Program Management/ Evaluation'' section, item IV.3d.3 above for more guidance.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''
Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''
OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.
OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.
OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus two copies of the following reports:

A final program and financial report no more than 90 days after the expiration of the award; Any interim report(s) required in the Bureau grant agreement document.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to Application and Submission Instructions [IV.3d.3] above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three workdays prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Raymond Harvey, Office of Citizen Exchanges, ECA/PE/C, Room 220, ECA/PE/C/WHA-EAP–08–16, Bureau of Educational and Cultural Affairs, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547; tel.: 202–453–8163; fax: 202–453–8168; *harveyrh@state.gov.*

For correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/WHA-EAP–08–16. Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: October 22, 2007.

C. Miller Crouch,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E7–21561 Filed 10–31–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for a Replacement Airport Near Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement and request for scoping comments.

SUMMARY: The FAA is issuing this Notice of Intent to the public an EIS under the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended, will be prepared to consider the siting and construction of a replacement airport for the Friedman Memorial Airport (SUN), Hailey, Idaho. The Bureau of Land Management (BLM) is involved in the project as alternative sites may occur on BLM land. The BLM has not entered into a cooperating or co-lead agreement at this time.

The Friedman Memorial Airport Authority, the sponsor of the project, has proposed to construct and operate a replacement airport for the Friedman Memorial Airport within Blaine County, Idaho.

Friedman Memorial Airport is located in Hailey, Idaho and serves the Wood River region of South Central Idaho. The airport currently does not and cannot comply with FAA airfield design standards on the limited land owned by the airport. Further, the airport is close to numerous residences. Mountainous terrain on the east, west, and north sides of SUN precludes instrument approach procedures which would make SUN accessible in poor weather.

All alternatives at the existing airport site are extremely costly and extend into residential areas. Further, they provide no benefit to reliability and safe operation in either good or adverse weather. Considering the limitations of the existing airport, elected and appointed officials in Blaine County, Idaho have decided to evaluate the environmental impacts of building and operating an airport meeting FAA design standards and supporting an instrument approach. Several alternatives, as well as the no-action alternative will be evaluated.

The EIS will determine all environmental impacts, such as and not limited to, noise impacts, impacts on air and water quality, wetlands, fish, wildlife, and plants, farmlands, floodplains, historic/tribal resources, hazardous wastes, socioeconomics, and economic factors.

FOR FURTHER INFORMATION CONTACT: Ms. Cayla Morgan, Federal Aviation Administration, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington, 98057–3356, (425) 227–2653.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform federal, state, and local government agencies, and the public of the intent to prepare an EIS and to conduct a public and agency scoping process. Information, data, opinions, and comments obtained throughout the scoping process will be considered in preparing the draft EIS.

The scoping process for this EIS will include a comment period for interested agencies and parties to submit oral and/or written comments representing the concerns and issues they believe should be addressed. Please submit any written comments to Cayla Morgan no later than January 15, 2008.

Public Scoping Meetings: To ensure that the full range of issues related to the proposed action is addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Public and agency scoping meetings will be conducted to identify any significant issues associated with the proposed action.

An agency scoping meeting for all Federal, State, and local regulatory agencies which have jurisdiction by law or have special expertise with respect to any potential environmental impacts associated with the proposed action will be held on December 4, 2007. This meeting will take place at 1 p.m. at the Community Campus, Fox Acres Road, Hailey, Idaho. A notification letter will be sent in advance of the meeting.

Two public scoping meetings for the general public will be held. The first meeting will be held from 6 p.m. to 8 p.m. on December 3, 2007. The second meeting will be held from 10 a.m. to 12 p.m. December 4, 2007. The meetings will be conducted at the Community Campus, Fox Acres Road, Hailey, Idaho. Each meeting will include an overview of the project, an informal open house period, and a question and answer session. To notify the general public of the scoping process, a legal notice will be placed in newspapers having general circulation in the study area. The newspaper notice will notify the public that scoping meetings will be held to gain their input concerning the proposed action, alternatives to be considered, and impacts to be evaluated.

The FAA is aware that there are Native American tribes with a historical interest in the area. The FAA will interact on a government-to-government basis, in accordance with all executive orders, laws, regulations, and other memoranda. The tribes will also be invited to participate in accordance with NEPA and Section 106 of the National Historic Preservation Act.

Further information about the EIS and the proposed action will be posted when available at the following Web site: *http://www.airportsites.net/SUN-EIS.*

Issued in Renton, Washington, October 22, 2007.

Donna P. Taylor,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 07–5424 Filed 10–31–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Gulf and Bay Counties, Florida

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Gulf and Bay Counties, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. George Hadley, Environmental Programs Coordinator, Federal Highway Administration, 545 John Knox Road, Suite 200, Tallahassee, Florida 32303, Telephone: (850) 942–9650.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a proposal to provide a new highway, known as the Gulf Coast Parkway, in the regional transportation network in Gulf and Bay Counties, Florida. The proposed improvements would connect U.S. 98 at CR 386 in Gulf County with U.S. 98 (Tyndall Parkway) in Springfield and U.S. 231 in Bay County, north of Panama City, utilizing a combination of existing roadway facilities and new roadway alignments. The distance of the proposed improvement is approximately 35 miles. The proposed highway would improve mobility and manage future traffic demand by providing additional infrastructure within the regional transportation network serving Bay and Gulf Counties. The proposed improvements would support economic development in Gulf County. The proposed highway would enhance regional connections to intermodal hubs (airports, seaports and the intermodal distribution center), would provide an alternate route to U.S. 98 through the Tyndall Air Force Base Reservation for national security purposes, and would be an additional route for hurricane evacuation.

Alternatives under consideration include (1) taking no action, and (2) 4-lane roadway alternatives on a combination of existing and new alignments. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A series of public meetings will be held in Gulf and Bay Counties between September 2007 and December of 2008. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned in the project vicinity during the fall of 2007.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 25, 2007.

George B. Hadley,

Environmental Programs Coordinator, Tallahassee, Florida.

[FR Doc. E7–21508 Filed 10–31–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: December 6, 2007, 11 a.m. to 2 p.m., Eastern Daylight Time.

PLACE: These meetings will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free numbers and pass codes needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Dated: October 26, 2007.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 07–5463 Filed 10–30–07; 3:42 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice and Request for Comments

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on August 23, 2007 (72 FR 48315).

DATES: Comments must be submitted on or before December 3, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On August 23, 2007, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 72 FR 48315. FRA received two comments after issuing this notice.

The first comment was submitted by Donald M. Hahs, National President, on behalf of the Brotherhood of Locomotive Engineers and Trainmen (BLET), who expressed whole hearted support for the proposed study. The BLET is a Division of the Rail Conference of the

International Brotherhood of Teamsters, and is the duly designated and recognized collective bargaining representative for the craft or class of Locomotive Engineer employed on all Class I railroads. BLET also represents operating and other employees on numerous Class II and Class III railroads. In his letter, Mr. Hahs remarked:

* * * The proposed activity will involve the participation of BLET members, and I am pleased to support the activity and strongly urge its approval by OMB.

The BLET has long been in the forefront of efforts to combat fatigue among its members and operating crews. Our activities include numerous cooperative ventures with the nation's railroad carriers and with FRA, as well as proposing and advocating legislative remedies designed to combat fatigue. We have followed previous FRA studies—involving other crafts—with interest and have found the results of those studies helpful to our endeavors.

Moreover, we fully support and have actively provided assistance in designing the proposed activity. In our opinion, the activity has significant scientific validity and will produce meaningful data for use in future fatigue-mitigation efforts by BLET and all railroad industry stakeholders. We are satisfied that adequate safeguards are in place to protect all legitimate confidentiality interests, and we look forward to OMB approval and implementation of the information collection.

The second comment was submitted by Paul C. Thompson, International President, on behalf of the United Transportation Union (UTU), who completely endorsed the proposed study. The UTU represents approximately 65,000 railroad employees who work in the operating crafts on the nation's railroads today. In his letter, Mr. Thompson noted:

* * * This FRA proposed study will focus on train and engine service employees, which consists of locomotive engineers, conductors, remote control operators, and switchmen. Fatigue is a major safety concern for our operating crews today, and UTU fully supports this study 'to develop an understanding of the work schedule-related fatigue issues that affect these operating crafts.'

This study will be very similar in both method and scope to the recently completed studies of railroad signalmen, maintenance of way employees, and train dispatchers.

In response to the **Federal Register** Notice and request for comments published on August 23, 2007, UTU files the following supportive comments:

• The proposed collection of information is necessary to assist the Department in furthering its understanding of work-schedule related fatigue issues affecting railroad train and engine employees. This information will provide the Department with the means to evaluate the overall impact of work/rest scheduling practices in the railroad industry.

• The collected information will have practical utility to the Department in its ongoing effort to analyze and combat work-schedule related fatigue within the railroad industry.

• The methodology proposed for this information collection activity is suitable and appropriate for the study and the respondent population, and will facilitate the collection of high quality data with high utility.

• The proposed information collection activity has been designed to be minimally burdensome on respondents. The proposed information collection activity is of limited duration and is compatible with the work environment where the data will be recorded by respondents.

Neither BLET nor UTU addressed the issue of burden hour estimates or burden cost estimates. After carefully reviewing these comments, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden, and are being submitted for clearance by OMB as required by the PRA.

Title: Work Schedules and Sleep Patterns of Train and Engine Service Employees.

OMB Control Number: 2130–NEW.

Type of Request: New collection.

Affected Public: Rail Workers.

Abstract: In a continuing effort to improve rail safety and to reduce the number of injuries and fatalities to rail workers, the issue of fatigue has received considerable attention from both FRA and the railroad industry. One of FRA's fatigue-related activities has been a series of studies designed to document and characterize the work/rest schedules and sleep patterns in signalmen, maintenance-of-way workers, and dispatchers. These studies used the methodology approved by the Office of Management and Budget (OMB), including random selection of participants to ensure a representative sample of each group. FRA has not yet collected data from two critically important labor crafts whose work schedules are regulated by FRA, locomotive engineers and conductors.

FRA is proposing a study that will focus on train and engine service employees, which consists of locomotive engineers, conductors, remote control operators, and switchmen. FRA seeks to develop an understanding of the work schedule-related fatigue issues that affect these operating crafts. The project will be very similar in both method and scope to the recently completed studies of railroad signalmen, maintenance of way employees, and dispatchers. The FRA proposes to undertake this study to develop an understanding of the work schedule-related fatigue issues for train and engine service employees.

The proposed study has two primary purposes:

• To document and characterize the work/rest schedules and sleep patterns of train and engine service employees.

• To examine the relationship between these schedules and level of alertness/fatigue for the individuals who work these schedules.

The intent is to report results in aggregate, not by railroad.

Subjective ratings from participants of their alertness/sleepiness on both work and non-work days will be an integral part of this study. The data will be collected through the use of a daily diary or log, as well as a brief background questionnaire for each participant. Analysis of the diary data will allow the FRA to assess the extent of any work-related fatigue issues for train and engine service employees. The proposed study will provide a defensible and definitive estimate of the work/rest cycle parameters and fatigue in train and engine service employees that will inform future FRA regulatory policy and action.

Form Number(s): FRA F 6180.127; FRA F 6180.128.

Affected Public: Rail Workers.

Respondent Universe: 340 Train and Engine Service Employees.

Frequency of Submission: On occasion.

Annual Estimated Burden Hours: 878 hours.

Status: Regular Review.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on October 25, 2007 .

D.J. Stadtler,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E7–21476 Filed 10–31–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35089]

East Penn Railroad, LLC—Acquisition Exemption-Berks County, PA

East Penn Railroad, LLC (ESPN), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire 8.60 miles of rail line from Berks County, PA. The line, known as the Colebrookdale Line, extends between milepost 0.00, at Pottsgrove Township, PA, and milepost 8.60, at Colebrookdale Township, PA, in Berks County.[1]

ESPN certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

[1] ESPN indicates that its new owner, Regional Rail, LLC, a noncarrier, discovered that one of ESPN's predecessors, Penn Eastern Rail Lines, Inc., had consummated the acquisition of the line in July 2003, but inadvertently failed to obtain prior Board approval for that acquisition. ESPN here seeks such approval.

The earliest this transaction may be consummated is November 15, 2007, the effective date of the exemption (30 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than November 8, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35089, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morell, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 23, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–21200 Filed 10–31–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Revised Notice of Funds Availability (NOFA) inviting applications for the FY 2008 Funding Round of the Native American CDFI Assistance (NACA) Program

Announcement Type: Initial announcement of funding opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

Dates: Applications for the FY 2008 Funding Round of the NACA Program must be received by 5 p.m. ET on Wednesday, December 19, 2007.

Executive Summary: Subject to funding availability, this NOFA is issued in connection with the FY 2008 funding round of the NACA Program.

I. Funding Opportunity Description

A. Through the NACA Program, the Fund provides: (i) Financial Assistance (FA) awards to Community Development Financial Institutions (CDFIs) that have at least 50 percent of their activities directed toward serving Native American, Alaska Native and/or Native Hawaiian Communities (Native CDFIs) that have Comprehensive Business Plans for creating demonstrable community development impact through the deployment of credit, capital, and financial services within their respective Target Markets or the expansion into new Investment Areas, Low-Income Targeted Populations, or Other Targeted Populations, and (ii) Technical Assistance (TA) grants to Native CDFIs entities proposing to become Native CDFIs, and to Native organizations, Tribes and Tribal organizations (Sponsoring Entities) that propose to create Native CDFIs, in order to build their capacity to better address the community development and capital access needs of their existing or proposed Target Markets, and/or to become certified Native CDFIs.

B. The regulations governing the CDFI Program, found at 12 CFR part 1805 (the Interim Rule), provide guidance on evaluation criteria and other requirements of the NACA Program. The Fund encourages Applicants to review the Interim Rule. Detailed application content requirements are found in the applicable funding application and related guidance materials. Each capitalized term in this NOFA is more fully defined in the Interim Rule, the application or the guidance materials.

C. The Fund reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this NOFA. The Fund reserves the right to re-allocate funds from the amount that is anticipated to be available under this NOFA to other Fund programs, particularly if the Fund determines that the number of awards made under this NOFA is fewer than projected.

II. Award Information

A. Funding Availability

1. *Anticipated FY 2008 Funding:* Through this NOFA, and subject to funding availability, the Fund expects that it may award approximately $3.5 million in appropriated funds through the NACA Program. The Fund reserves the right to award in excess of $3.5 million in appropriated funds to Applicants in the FY 2008 Funding Round, provided that the funds are available and the Fund deems it appropriate.

2. *Availability of Funds for the FY 2008 Funding Round:* Funds for the FY 2008 Funding Round have not yet been appropriated. If funds are not appropriated for the FY 2008 Funding Round, there will not be a FY 2008 Funding Round. Further, it is possible that if funds are appropriated for the FY

2008 Funding Round, the amount of such funds may be greater than or less than the amounts set forth above.

B. Types of Awards

An Applicant may submit an application either for: (i) A FA award only; (ii) a FA award and a TA grant; or (iii) a TA grant only.

1. *FA Awards:* FA is intended to provide flexible financial support to Native CDFIs so that they may achieve the strategies outlined in their Comprehensive Business Plans. A FA award can be requested by an Applicant for use in the following four categories of activity: Financial Products, Loan Loss Reserves, Capital Reserves, and/or Operations. For purposes of this NOFA, Financial Products means: loans, grants, equity investments and similar financing activities, including the purchase of loans originated by certified Native CDFIs and the provision of loan guarantees, to and in its Target Market, or for related purposes that the Fund deems appropriate. Loan Loss Reserves means: funds that the Applicant will set aside in the form of cash, or through accounting-based accrual, reserves to cover losses on loans, accounts and notes receivable made to or in its Target Market. Capital Reserves means: funds that the Applicant will set aside in the form of reserves to support the Applicant's ability to leverage other capital, such as by increasing its net assets, to serve the financing needs of its Target Market, or for related purposes that the Fund deems appropriate. Operations means: funds that the Applicant will use to undertake Development Services, Financial Services, and/or for related purposes that the Fund deems appropriate. The most common use of FA is for the Applicant's Financial Products: a FA award can be a critical source of funding to support the Applicant's community development lending activities. The Fund may provide FA awards in the form of equity investments (including, in the case of certain Insured Credit Unions, secondary capital accounts), grants, loans, deposits, credit union shares, or any combination thereof. The Fund reserves the right, in its sole discretion, to provide a FA award in a form and amount other than that which is requested by an Applicant; however, the award amount will not exceed the Applicant's award request as stated in its application. The Fund reserves the right, in its sole discretion, to provide a FA award to an Applicant on the condition that the Applicant agrees to use a TA grant for specified capacity building purposes, even if the Applicant has not requested a TA grant.

2. *TA Grants:*

(a) The Fund may provide TA awards in the form of grants. The Fund reserves the right, in its sole discretion, to provide a TA grant for uses and amounts other than that which are requested by an Applicant; however, the award amount will not exceed the Applicant's award request as stated in its application and the applicable budget chart.

(b) TA grants may be used to address a variety of needs including, but not limited to, development of strategic planning documents (such as strategic or capitalization plans), market analyses or product feasibility analyses, operational policies and procedures, curricula for Development Services (such as entrepreneurial training, home buyer education, financial education or training, borrower credit repair training), improvement of underwriting and portfolio management, development of outreach and training strategies to enhance product delivery, operating support to expand into a new Target Market, and tools that allow the Applicant to assess the impact of its activities in its community. Each Applicant requesting Professional Services in its TA proposal is required to provide supporting information in the form of a scope of work, to include information regarding the expected cost, the likely provider of the TA, a description of the anticipated timing of the expenditures, and a narrative description of how the TA grant will enhance its capacity to provide greater community development impact and/or to become certified as a Native CDFI, if applicable.

(c) Eligible TA grant uses include, but are not limited to: (i) Acquiring consulting services; (ii) acquiring/enhancing technology items, including computer hardware, software and Internet connectivity; (iii) acquiring training for staff, management and/or board members; and (iv) paying administrative expenses, including staff salary and other key award related expenses, that will enhance the capacity of the Applicant to serve its Target Market and/or to become certified as a Native CDFI or to create a Native CDFI.

C. Notice of Award; Assistance Agreement

Each Awardee under this NOFA must sign a Notice of Award and an Assistance Agreement in order to receive a disbursement of award proceeds by the Fund. The Notice of Award and the Assistance Agreement contain the terms and conditions of the award. For further information, see Sections VI.A and VI.B of this NOFA.

III. Eligibility Information

A. Eligible Applicants

The Interim Rule specifies the eligibility requirements that each Applicant must meet in order to be eligible to apply for assistance under this NOFA. The following sets forth additional detail and dates that relate to the submission of applications under this NOFA:

1. *CDFI Certification Requirements:* For purposes of this NOFA, eligible FA Applicants include Certified Native CDFIs and Certifiable Native CDFIs; eligible TA Applicants include Certified Native CDFIs, Certifiable Native CDFIs, Emerging CDFIs and Sponsoring Entities, defined as follows:

(a) *Certified Native CDFIs:* A Certified Native CDFI is an entity that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community, whose certification has not expired, and that has not been notified by the Fund that its certification has been terminated. Each such Applicant must submit a ''Certification of Material Event Form'' to the Fund not later than Wednesday, December 5, 2007, or such other dates as the Fund may proscribe, in accordance with the instructions on the Fund's Web site at *http://www.cdfifund.gov.* Please note: The Fund provided a number of CDFIs with certifications expiring in 2003 through 2008 written notification that their certifications had been extended. The Fund will consider the extended certification date (the later date) to determine whether those CDFIs meet this eligibility requirement.

(b) *Certifiable Native CDFIs:* For purposes of this NOFA, a Certifiable Native CDFI is an entity that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community and from which the Fund receives a complete CDFI Certification Application no later than Wednesday, December 5, 2007, or such other dates as the Fund may proscribe, evidencing that the Applicant meets the requirements to be certified as a Native CDFI. Applicants may obtain the CDFI Certification Application through the Fund's Web site at *http://www.cdfifund.gov.* Applications for certification must be submitted as instructed in the application form. FA Applicants that are Certifiable Native CDFIs please note: While your organization may be conditionally selected for funding (as evidenced through the Notice of Award), the Fund will not enter into an Assistance Agreement or disburse award funds unless and until the Fund has certified your organization as a Native CDFI. If the Fund is unable to certify your organization as a Native CDFI based on the CDFI certification application that your organization submits to the Fund, the Notice of Award may be terminated and the award commitment may be cancelled, in the sole discretion of the Fund.

(c) *Emerging Native CDFIs:* For purposes of this NOFA, an Emerging Native CDFI is an entity that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community and demonstrates to the satisfaction of the Fund that it has a reasonable plan to be certified as a Native CDFI by December 31, 2012 or such other date selected by the Fund. Emerging Native CDFIs may only apply for TA grants; they are not eligible to apply for FA awards. Each Emerging Native CDFI that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to become certified as a Native CDFI by a certain date.

(d) *Sponsoring Entities:* For the purposes of this NOFA, a Sponsoring Entity is an entity that proposes to create a separate legal entity that will become a certified Native CDFI. For purposes of this NOFA, Sponsoring Entities include: (a) A Tribe, Tribal entity, Alaska Native Village, Village Corporation, Regional Corporation, Non-Profit Regional Corporation/Association, or Inter-Tribal or Inter-Village organization; (b) an organization whose primary mission is to serve a Native Community including, but not limited to an Urban Indian Center, Tribally Controlled Community College, community development corporation (CDC), training or education organization, or Chamber of Commerce, and that primarily serves (meaning, at least 50 percent of its activities are directed toward serving) a Native Community. Sponsoring Entities may only apply for TA grants; they are not eligible to apply for FA awards. Each Sponsoring Entity that is selected to receive a TA grant will be required, pursuant to its Assistance Agreement with the Fund, to create a legal entity by a certain date that will, in turn, seek CDFI certification.

2. *Limitation on Awards:* An Applicant may receive only one award through the CDFI Program in the FY 2008 funding rounds. A NACA Program Applicant, its Subsidiaries or Affiliates also may apply for and receive: (i) A tax credit allocation through the New Markets Tax Credit (NMTC) Program, but only to the extent that the activities approved for NACA Program awards are different from those activities for which the Applicant receives a NMTC Program allocation; and (ii) an award through the Bank Enterprise Award (BEA) Program (subject to certain limitations; refer to the Interim Rule at 12 CFR 1805.102).

3. *Contacting the Fund.* The Fund will respond to questions and provide support concerning Native CDFI certification related to the FY 2008 Funding Round between the hours of 9 a.m. and 5 p.m. ET, through Monday, December 3, 2007. The Fund will not respond to questions or provide support concerning Native CDFI certification, related to the FY 2008 Funding Round, that are received after 5 p.m. ET on Monday, December 3, 2007. The CDFI Certification Application and other information regarding CDFI certification may be obtained from the Fund's Web site at *http://www.cdfifund.gov.*

B. Prior Awardees

Applicants must be aware that success in a prior round of any of the Fund's programs is not indicative of success under this NOFA. Prior awardees are eligible to apply under this NOFA, except as follows:

1. *$5 Million Funding Cap:* The Fund is generally prohibited from obligating more than $5 million in assistance, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period. In general, the three-year period extends back three years from the date that the Fund signs a Notice of Award; for purposes of this NOFA, and for ease of administration, the Fund will consider any assistance documented with a Notice of Award dated between July 31, 2005 and July 31, 2008 (which is the anticipated date that the Fund will issue Notices of Award for the FY 2008 Funding Round).

2. *Failure to meet reporting requirements:* The Fund will not consider an application submitted by an Applicant if the Applicant, or an entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in a previously executed assistance, allocation or award agreement(s), as of the applicable application deadline of this NOFA. Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received.

3. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, allocation or award agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, allocation, or award agreement, the Fund will consider the Applicant's application under this NOFA pending full resolution, in the sole determination of the Fund, of the noncompliance.

4. *Default status:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant is in default of a previously executed assistance, allocation or award agreement(s). Further, an entity is not eligible to apply for an award pursuant to this NOFA if, as of the applicable application deadline of this NOFA, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and has been determined by the Fund to be in default of a previously executed assistance, allocation or award agreement(s).

5. *Termination in default:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee or allocatee under any Fund program if: (i) Within the 12-month period prior to the applicable application deadline of this NOFA, the Fund has made a final determination that such Applicant's prior award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date

for the applicable terminated assistance, allocation or award agreement(s) falls within the 12-month period prior to the application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if: (i) Within the 12-month period prior to the applicable application deadline, the Fund has made a final determination that another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation terminated in default of a previously executed assistance, allocation or award agreement(s); and (ii) the final reporting period end date for the applicable terminated assistance, allocation or award agreement(s) falls within the 12-month period prior to the application deadline of this NOFA.

6. *Undisbursed award funds:* The Fund will not consider an application submitted by an Applicant that is a prior Fund Awardee under any Fund program if the Applicant has a balance of undisbursed award funds (defined below) under said prior award(s), as of the applicable application deadline of this NOFA. Further, an entity is not eligible to apply for an award pursuant to this NOFA if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOFA. In a case where another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee under any Fund program, and has a balance of undisbursed award funds under said prior award(s), as of the applicable application deadline of this NOFA, the Fund will include the combined awards of the Applicant and such Affiliated entities when calculating the amount of undisbursed award funds.

For purposes of the calculation of undisbursed award funds for the BEA Program, only awards made to the Applicant (and any Affiliates) three to five calendar years prior to the end of the calendar year of the application deadline of this NOFA are included (''includable BEA awards''). Thus, for purposes of this NOFA, undisbursed BEA Program award funds are the amount of FYs 2002, 2003 and 2004 awards that remain undisbursed as of the application deadline of this NOFA.

For purposes of the calculation of undisbursed award funds for the CDFI Program and the Native Initiatives (NI) Funding Programs, only awards made to the Applicant (and any Affiliates) two to five calendar years prior to the end of the calendar year of this NOFA are included (''includable CDFI/NI awards''). Thus, for purposes of this NOFA, undisbursed CDFI Program and NI awards are the amount of FYs 2002, 2003, 2004 and 2005 awards that remain undisbursed as of the application deadline of this NOFA.

To calculate total includable BEA/CDFI/NI awards: Amounts that are undisbursed as of the application deadline of this NOFA cannot exceed five percent (5%) of the total includable awards. Please refer to an example of this calculation on the Fund's Web site, found in the Q&A document for the FY 2008 Funding Round.

The ''undisbursed award funds'' calculation does not include: (i) Tax credit allocation authority made available through the NMTC Program; (ii) any award funds for which the Fund received a full and complete disbursement request from the Awardee by the applicable application deadline of this NOFA; (iii) any award funds for an award that has been terminated in writing by the Fund or deobligated by the Fund; or (iv) any award funds for an award that does not have a fully executed assistance or award agreement. The Fund strongly encourages Applicants requesting disbursements of ''undisbursed award funds'' from prior awards to provide the Fund with a complete disbursement request at least 10 business days prior to the application deadline of this NOFA. An Applicant that is unsure about the disbursement status of any prior award should contact the Fund's Financial Manager via e-mail at *CDFI.disburseinquiries@cdfi.treas.gov* for more information, no less than thirty (30) calendar days prior to the application deadline of this NOFA. Requests submitted less than thirty calendar days prior to the application deadline may not receive a response before the application deadline.

7. *Exception for Applicants impacted by Hurricanes Katrina and/or Rita:* Please note that the provisions of paragraphs 2 (Failure to meet reporting requirements) and 6 (Undisbursed award funds) of this section do not apply to any Applicant that has an office located in, or that provides a significant volume of services or financing to residents of or businesses located in, a county that is within a ''major disaster area'' as was declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita. Said requirements are waived for those Applicants under this NOFA.

8. *Contact the Fund.* Accordingly, Applicants that are prior Awardees are advised to: (i) Comply with requirements specified in assistance, allocation and/or award agreement(s), and (ii) contact the Fund to ensure that all necessary actions are underway for the disbursement or deobligation of any outstanding balance of said prior award(s). Disbursement questions should be directed to Grants Management via e-mail to *grantsmanagement@cdfi.treas.gov.* Reporting and compliance questions should be directed to Compliance, Monitoring and Evaluation (CME) by e-mail to *cme@cdfi.treas.gov.* Telephone calls to Grants Management and CME should be directed to (202) 622–8226; facsimiles to (202) 622–7754; and mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. The Fund will respond to Applicants' reporting, disbursement or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through Monday, December 17, 2007 (two business days before the application deadline). The Fund will not respond to Applicants' reporting, disbursement or compliance phone calls or e-mail inquiries that are received after 5 p.m. ET on said date, until after the funding application deadline.

C. Matching Funds

1. *Matching Funds Requirements in General:* Applicants responding to this NOFA must obtain non-Federal matching funds from sources other than the Federal government on the basis of not less than one dollar for each dollar of FA funds provided by the Fund (matching funds are not required for TA grants). Matching funds must be at least comparable in form and value to the FA award provided by the Fund (for example, if an Applicant is requesting a FA grant from the Fund, the Applicant must have evidence that it has obtained matching funds through grant(s) from non-Federal sources that are at least equal to the amount requested from the Fund). Funds used by an Applicant as matching funds for a prior FA award under the NACA Program or under another Federal grant or award program cannot be used to satisfy the matching funds requirement of this NOFA. If an Applicant seeks to use as matching funds monies received from an organization that was a prior Awardee under the NACA Program, the Fund will

deem such funds to be Federal funds, unless the funding entity establishes to the reasonable satisfaction of the Fund that such funds do not consist, in whole or in part, of NACA Program funds or other Federal funds. For the purposes of this NOFA, BEA Program award proceeds received by an Applicant from a Non-Affiliate BEA Program Awardee are not deemed to be Federal funds and are eligible as matching funds. The Fund encourages Applicants to review the Interim Rule at 12 CFR 1805.500 *et seq.,* and matching funds guidance materials on the Fund's Web site for further information.

2. *Matching Funds Requirements Per Applicant Category:* Due to funding constraints and the desire to quickly deploy Fund dollars, the Fund will not consider for a FA award any Applicant that has no matching funds in-hand or firmly committed as of the application deadline under this NOFA. Specifically, FA Applicants must meet the following matching funds requirements: A NACA Applicant for FA must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2006 and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand 100 percent of the required matching funds by March 14, 2009 (with required documentation of such receipt received by the Fund not later than March 31, 2009), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any Applicant that demonstrates that it has less than 100 percent of matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by March 14, 2009.

3. *Matching Funds Terms Defined; Required Documentation.*

(a) *''Matching funds in-hand''* means that the Applicant has actually received the matching funds. If the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable written documentation of the source, form and amount of the Matching Funds (i.e., grant, loan, deposit, and equity investment). For a loan, the Applicant must provide the Fund with a copy of the loan agreement and promissory note. For a grant, the Applicant must provide the Fund with a copy of the grant letter or agreement. For an equity investment, the Applicant must provide the Fund with a copy of the stock certificate and any related shareholder agreement. Further, if the matching funds are ''in-hand,'' the Applicant must provide the Fund with acceptable documentation that evidences its receipt of the matching funds proceeds, such as a copy of a check or a wire transfer statement.

(b) ''*Firmly committed matching funds*'' means that the Applicant has entered into or received a legally binding commitment from the matching funds source that the matching funds will be disbursed to the Applicant. If the matching funds are ''firmly committed,'' the Applicant must provide the Fund with acceptable written documentation to evidence the source, form, and amount of the firm commitment (and, in the case of a loan, the terms thereof), as well as the anticipated date of disbursement of the committed funds.

(c) The Fund may contact the matching funds source to discuss the matching funds and the documentation provided by the Awardee. If the Fund determines that any portion of the Applicant's matching funds is ineligible under this NOFA, the Fund, in its sole discretion, may permit the Applicant to offer alternative matching funds as substitute for the ineligible matching funds; provided, however, that (i) the Applicant must provide acceptable alternative matching funds documentation within 2 business days of the Fund's request and (ii) the alternative matching funds documentation cannot increase the total amount of Financial Assistance requested by the Applicant.

4. *Special Rule for Insured Credit Unions:* Please note that the Interim Rule allows an Insured Credit Union to use retained earnings to serve as matching funds for a FA grant in an amount equal to: (i) The increase in retained earnings that have occurred over the Applicant's most recent fiscal year; (ii) the annual average of such increases that have occurred over the Applicant's three most recent fiscal years; or (iii) the entire retained earnings that have been accumulated since the inception of the Applicant or such other financial measure as may be specified by the Fund. For purposes of this NOFA, if option (iii) is used, the Applicant must increase its member and/or non-member shares or total loans outstanding by an amount that is equal to the amount of retained earnings that is committed as matching funds. This amount must be raised by the end of the Awardee's second performance period, as set forth in its Assistance Agreement, and will be based on amounts reported in the Applicant's Audited or Reviewed Financial Statements or NCUA Form 5300 Call Report. The Fund will assess the likelihood of this increase during the application review process. An award will not be made to any Applicant that has not demonstrated that it has increased shares or loans by at least 25 percent of the requested FA award amount between December 31, 2006 and December 31, 2007, as demonstrated by the corresponding NCUA report.

5. *Severe Constraints Exception to Matching Funds Requirement; Applicability to Applicants Located in FEMA-Designated Major Disaster Areas Created by Hurricanes Katrina and/or Rita:* In the case of any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, any county that is within a ''major disaster area'' as was declared by the Federal Emergency Management Agency (FEMA) as a result of Hurricanes Katrina and/or Rita, and that has severe constraints on available sources of matching funds, such Applicant may be eligible for a ''severe constraints waiver'' (see section 1805.203 of the Interim Rule) if (i) it can demonstrate to the satisfaction of the Fund that an Investment Area(s) or Targeted Population(s) would not be adequately served without such a waiver and (ii) it projects to use the assistance to address issues resulting from Hurricanes Katrina and/or Rita (such as a significant volume of loan defaults) or to provide financial products, financial services, or Development Services to residents of or businesses located in any county that is within a ''major disaster area'' as was declared by FEMA as a result of Hurricanes Katrina and/or Rita. If eligible for such a waiver, the Applicant may comply with the matching funds requirements of this NOFA as follows: (i) The matching funds requirement for such Applicant would be reduced to 50 percent (meaning, the Applicant must match 50 percent of the Fund's FA award rather than 100 percent), or (ii) such an Applicant may provide matching funds in alternative (meaning, non-monetary) forms if the Applicant has total assets of less than $100,000 at the time of the application deadline, serves non-metropolitan or rural areas, and is not requesting more than $25,000 in financial assistance from the Fund. In the case of item (i) of this paragraph, the Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2006

and on or before the application deadline. The Fund reserves the right to rescind all or a portion of a FA award and re-allocate the rescinded award amount to other qualified Applicant(s), if an Applicant fails to obtain in-hand the required matching funds by December 31, 2008 (with required documentation of such receipt received by the Fund not later than December 15, 2008), or to grant an extension of such matching funds deadline for specific Applicants selected to receive FA, if the Fund deems it appropriate. For any such Applicant that demonstrates that it has less than the required matching funds in-hand or firmly committed as of the application deadline, the Fund will evaluate the Applicant's ability to raise the remaining matching funds by December 31, 2008. In the case of item (ii) of this paragraph, the NACA Program funding application contains further instructions on the type of documentation that the Applicant must provide as evidence that such match was received and its valuation. The Fund reserves the right, in its sole discretion, to disallow any such match for which adequate documentation or valuation is not provided.

IV. Application and Submission Information

A. Form of Application Submission

Applicants may submit applications under this NOFA only electronically, through Grants.gov. Applications sent by mail, facsimile or other form will not be accepted. The Fund will not accept applications in paper form, other than the assigned signature page and certain paper attachments, as specified below and in the application.

B. Grants.gov

For the FY 2008 Funding Round, in compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act, the Fund is required to accept applications submitted through the Grants.gov electronic system. The Fund will post to its Web site at *http://www.cdfifund.gov* instructions for accessing and submitting an application through Grants.gov. The application instructions will be posted as soon as they are available and once the application materials are accessible through Grants.gov. Applicants are encouraged to start the registration process now at *www.Grants.gov* as the process may take several weeks to fully complete. See the following link for information on getting started on Grants.gov: *http://grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf.*

C. Application Content Requirements

Detailed application content requirements are found in the application and guidance. Please note that, pursuant to OMB guidance (68 **Federal Register** 38402), each Applicant must provide, as part of its application submission, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. In addition, each application must include a valid and current Employer Identification Number (EIN), with a letter or other documentation from the Internal Revenue Service (IRS) confirming the Applicant's EIN. An electronic application that does not include an EIN is incomplete and cannot be transmitted to the Fund. Applicants should allow sufficient time for the IRS and/or Dun and Bradstreet to respond to inquiries and/or requests for identification numbers. Once an application is submitted, the Applicant will not be allowed to change any element of the application. The preceding sentence does not limit the Fund's ability to contact an Applicant for the purpose of obtaining clarifying or confirming application information (such as a DUNS number or EIN information).

D. MyCDFIFund Accounts

All Applicants must register User and Organization accounts in myCDFIFund, the Fund's Internet-based interface. An Applicant must be registered as both a User and an Organization in myCDFIFund as of the applicable application deadline in order to be considered to have submitted a complete application. As myCDFIFund is the Fund's primary means of communication with Applicants and Awardees, organizations must make sure that they update the contact information in their myCDFIFund accounts. For more information on myCDFIFund, please see the ''Frequently Asked Questions'' link posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

E. Application Deadlines

Applicants must submit all materials described in and required by the application by the applicable deadline.

1. *Application Deadlines:* Applications submitted via Grants.gov must be received in accordance with the instructions provided by the Fund, by 5 p.m. ET on Wednesday, December 19, 2007. In addition, Applicants that submit electronic applications must separately submit (by mail or other courier/delivery service) a signature page, signed by the Applicant's Authorized Representative, and all other required paper attachments; said documents must be received at the address set forth below by 5 p.m. ET on Friday, December 21, 2007.

2. *Late Delivery:* The Fund will neither accept a late application nor any portion of an application that is late; an application that is late, or for which any portion is late, will be rejected. An application submitted via Grants.gov and all required paper attachments must be received by the applicable time and date set forth above. The Fund will not grant exceptions or waivers for late delivery of documents including, but not limited to, late delivery that is caused by third parties such as the United States Postal Service, couriers or overnight delivery services. Any application that is deemed ineligible will not be returned to the Applicant.

F. Intergovernmental Review

Not applicable.

G. Funding Restrictions

For allowable uses of FA proceeds, please see the Interim Rule at 12 CFR 1805.301.

V. Application Review Information

A. Criteria

The Fund will evaluate each application on a 100-point scale using numeric scores with respect to the following five sections:

1. *Market Analysis* (25 points): The Fund will evaluate: (i) The extent and nature of the economic distress within the designated Target Market including the Applicant's understanding of its current and prospective customers; and (ii) the extent of demand for the Applicant's Financial Products, Development Services, and Financial Services within the designated Target Market. The Fund will give special consideration to any Applicant that has an office that is located in, or that provides a significant volume of services or financing to residents of or businesses located in, (i) any county that is within the area declared to be a ''major disaster'' by FEMA as a result of Hurricanes Katrina and/or Rita; and/or (ii) any state that has been declared a ''reception state'' by FEMA.

2. *Business Strategy* (25 points): The Fund will evaluate the Applicant's business strategy for addressing market demand and creating community development impact through: (i) Its Financial Products, Development Services, and/or Financial Services; (ii) its marketing, outreach, and delivery strategy; and (iii) the extent, quality and nature of coordination with other similar providers of Financial Products

and Financial Services, government agencies, and other key community development entities within the Target Market. The Fund will take into consideration whether the Applicant is proposing to expand into a new Target Market.

3. *Community Development Performance and Effective Use* (20 points): The Fund will evaluate (i) the Applicant's vision for its Target Market, specific outcomes or impacts for measuring progress towards achieving this vision, and the extent to which this award will allow it to achieve them; (ii) the Applicant's track record in providing Financial Products, Financial Services, and Development Services to the Target Market; (iii) the extent to which proposed activities will benefit the Target Market; (iv) the likelihood of achieving the impact projections, including the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market by promoting homeownership, affordable housing development, job creation or retention, the provision of affordable financial services, and other community development objectives; and (v) the extent to which the Applicant will maximize the effective use of the Fund's resources. If an Applicant has a prior track record of serving Investment Areas(s) or Targeted Population(s), it must demonstrate that: (i) It has a record of success in serving said Investment Area(s) or Targeted Population(s); (ii) it will offer more Financial Products or Development Services and/or increase the volume of its current activities in the Target Market; and/or (ii) it will expand its operations into a larger Target Market.

4. *Management* (20 points): The Fund will evaluate the Applicant's organizational capacity to achieve the objectives set forth in its Comprehensive Business Plan as well as its ability to use its award successfully and maintain compliance with its Assistance Agreement through an evaluation of: (i) The capacity, skills, size and experience of the Applicant's current and proposed Governing Board, management team, and key staff; and (ii) the Applicant's management controls and risk mitigation strategies including policies and procedures for portfolio underwriting and review, financial management, risk management, management information systems.

5. *Financial Health and Viability* (10 points): The Fund will evaluate the Applicant's: (i) Audited or otherwise prepared Financial Statements; (ii) safety and soundness, including an analysis of the Applicant's financial services industry ratios (capital, liquidity, deployment and self-sufficiency) and ability to sustain positive net revenue; (iii) projected financial health, including its ability to raise operating support from sources other than the Fund and its capitalization strategy; and (iv) portfolio performance including loan delinquency, loan losses, and loan loss reserves. If an Applicant does not have 100 percent of the required matching funds in-hand (versus committed), the Applicant must demonstrate to the satisfaction of the Fund that it will raise the outstanding balance of matching funds by March 14, 2009.

6. *Technical Assistance Proposal:* Any Applicant applying for a TA grant, either alone or in conjunction with a request for a FA award, must complete a Technical Assistance Proposal (TAP) as part of its application. The TAP consists of a summary of the organizational improvements needed to achieve the objectives of the Comprehensive Business Plan, a budget, and a description of the requested goods and/or services comprising the TA award request. The budget and accompanying narrative will be evaluated for the eligibility and appropriateness of the proposed uses of the TA award (described above). In addition, if the Applicant identifies a capacity-building need related to any of the evaluation criteria above (for example, if the Applicant requires a market need analysis or a community development impact tracking/reporting system), the Fund will assess its plan to use the TA grant to address said needs. An Applicant that is not a Certified Native CDFI and that requests TA to address certification requirements must explain how the requested TA grant will assist the Applicant in meeting the certification requirement. The Fund will assess the reasonableness of the plan to become certified by December 31, 2010, taking into account the requested TA. For example, if the Applicant does not currently make loans and therefore does not meet the Financing Entity requirement, it might describe how the TA funds will be used to hire a consultant to develop underwriting policies and procedures to support the Applicant's ability to start its lending activity. An Applicant that requests a TA grant for recurring activities must clearly describe the benefit that would accrue to its capacity or to its Target Market(s) (such as plans for expansion of staff, market, or products) as a result of the TA award. If the Applicant is a prior Fund Awardee, it must describe how it has used the prior assistance and explain the need for additional Fund dollars over and above such prior assistance. Such an Applicant also must describe the additional benefits that would accrue to its capacity or to the Target Market(s) if the Applicant receives another award from the Fund, such as plans for expansion of staff, market, or products. The Fund will not provide funding for the same activities funded in prior awards.

B. Review and Selection Process

1. *Eligibility and Completeness Review:* The Fund will review each application to determine whether it is complete and the Applicant meets the eligibility requirements set forth above. An incomplete application does not meet eligibility requirements and will be rejected. Any application that does not meet eligibility requirements will not be returned to the Applicant.

2. *Substantive Review:* If an application is determined to be complete and the Applicant is determined to be eligible, the Fund will conduct the substantive review of the application in accordance with the criteria and procedures described in the Interim Rule, this NOFA and the application and guidance. Each FA application will be reviewed and scored by multiple readers. Each TA application will be read and scored by one reader. Readers may include Fund staff and other experts in community development finance. As part of the review process, the Fund may contact the Applicant by telephone, e-mail, mail, or through an on-site visit for the purpose of obtaining clarifying or confirming application information (such as statements of work, resumes, EINs, DUNS numbers). After submitting its application, the Applicant will not be permitted to revise or modify its application in any way nor attempt to negotiate the terms of an award. If contacted for clarifying or confirming information, the Applicant must respond within the time parameters set by the Fund.

3. *Application Scoring; Ranking:*

(a) *Application Scoring:* The Fund will evaluate each application on a 100-point scale, comprising the five criteria categories described above, and assign numeric scores. An Applicant must receive a minimum score in each evaluation criteria in order to be considered for an award. In the case of an Applicant that has previously received funding from the Fund through any Fund program, the Fund will consider and will deduct points for: (i) The Applicant's noncompliance with any active award or award that terminated during the 12 months prior to the application deadline in meeting its performance goals, financial soundness covenants (if applicable), reporting deadlines and other requirements set forth in the assistance or award agreement(s) with the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA; (ii) the Applicant's failure to make timely loan payments to the Fund during the Applicant's two complete fiscal years prior to the application deadline of this NOFA (if applicable); (iii) performance on any prior Assistance Agreement as part of the overall assessment of the Applicant's ability to carry out its Comprehensive Business Plan; and (iv) funds deobligated from a FY 2004, FY 2005 or FY 2006 FA award (if the Applicant is applying for a FA award under this NOFA) if (A) the amount of deobligated funds is at least $200,000 and (B) the deobligation occurred subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made). Any award deobligations that result in a point deduction under an application submitted pursuant to either funding round of this NOFA will not be counted against any future application for FA through the NACA Program. All questions regarding outstanding reports or compliance should be directed to Compliance, Monitoring and Evaluation by e-mail to *cme@cdfi.treas.gov*; by telephone at (202) 622–8226; by facsimile at (202) 622–7754; or by mail to CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers. The Fund will respond to reporting or compliance questions between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through Monday, December 17, 2007.

(b) *Ranking:* The Fund then will rank the applications by their scores, from highest to lowest, based on each Applicant's scores for all five criteria categories added together.

4. *Award Selection:* The Fund will make its final award selections based on the rank order of Applicants by their scores and the amount of funds available. Subject to the availability of funding, the Fund will award funding in the order of the ranking. In addition, the Fund may consider the institutional and geographic diversity of Applicants when making its funding decisions.

5. *Insured CDFIs:* In the case of Insured Depository Institutions and Insured Credit Unions, the Fund will take into consideration the views of the Appropriate Federal Banking Agencies; in the case of State-Insured Credit Unions, the Fund may consult with the appropriate State banking agencies (or comparable entity). The Fund will not approve an FA award or a TA grant to any Insured Credit Union (other than a State-Insured Credit Union) or Insured Depository Institution Applicant that has a CAMEL rating that is higher than a ''3'' or for which its Appropriate Federal Banking Agency indicates it has safety and soundness concerns, unless the Appropriate Federal Banking Agency asserts, in writing, that: (i) An upgrade to a CAMEL 3 rating or better (or other improvement in status) is imminent and such upgrade is expected to occur not later than September 30, 2008, or within such other time frame deemed acceptable by the Fund, or (ii) the safety and soundness condition of the Applicant is adequate to undertake the activities for which the Applicant has requested an FA award and the obligations of an Assistance Agreement related to such an FA award.

6. *Award Notification:* Each Applicant will be informed of the Fund's award decision either through a Notice of Award if selected for an award (see Notice of Award section, below) or written declination if not selected for an award. Each Applicant that is not selected for an award based on reasons other than completeness or eligibility issues will be provided a written debriefing on the strengths and weaknesses of its application. This feedback will be provided in a format and within a timeframe to be determined by the Fund, based on available resources. The Fund will notify Awardees by e-mail using the addresses maintained in the Awardee's myCDFIFund account (postal mailings will be used only in rare cases).

7. The Fund reserves the right to reject an application if information (including administrative errors) comes to the attention of the Fund that either adversely affects an applicant's eligibility for an award, or adversely affects the Fund's evaluation or scoring of an application, or indicates fraud or mismanagement on the part of an Applicant. If the Fund determines that any portion of the application is incorrect in any material respect, the Fund reserves the right, in its sole discretion, to reject the application. The Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the Fund deems it appropriate; if said changes materially affect the Fund's award decisions, the Fund will provide information regarding the changes through the Fund's Web site. There is no right to appeal the Fund's award decisions. The Fund's award decisions are final.

VI. Award Administration Information

A. Notice of Award

The Fund will signify its conditional selection of an Applicant as an Awardee by delivering a signed Notice of Award to the Applicant through its myCDFIFund account. The Notice of Award will contain the general terms and conditions underlying the Fund's provision of assistance including, but not limited to, the requirement that the Awardee and the Fund enter into an Assistance Agreement. The Applicant must execute the Notice of Award and return it to the Fund. By executing a Notice of Award, the Awardee agrees, among other things, that, if prior to entering into an Assistance Agreement with the Fund, information (including administrative error) comes to the attention of the Fund that either adversely affects the Awardee's eligibility for an award, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the Notice of Award or take such other actions as it deems appropriate. Moreover, by executing a Notice of Award, the Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is in default of any Assistance Agreement previously entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the Notice of Award or take such other actions as it deems appropriate. The Fund reserves the right, in its sole discretion, to rescind its award if the Awardee fails to return the Notice of Award, signed by the authorized representative of the Awardee, along with any other requested documentation, within the deadline set by the Fund.

1. *Failure to meet reporting requirements:* If an Awardee, or an entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund) is a prior Fund Awardee or allocatee under any Fund program and is not current on the reporting requirements set forth in the previously executed assistance, allocation or award agreement(s), as of the date of the Notice of Award, the Fund reserves the right, in its sole discretion, to delay entering

into an Assistance Agreement until said prior Awardee or allocatee is current on the reporting requirements in any previously executed assistance, allocation or award agreement(s). Please note that the Fund only acknowledges the receipt of reports that are complete. As such, incomplete reports or reports that are deficient of required elements will not be recognized as having been received. If said prior Awardee or allocatee is unable to meet this requirement within the timeframe set by the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

2. *Pending resolution of noncompliance:* If an Applicant is a prior Awardee or allocatee under any Fund program and if: (i) It has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. Further, if another entity that Controls the Applicant, is Controlled by the Applicant or shares common management officials with the Applicant (as determined by the Fund), is a prior Fund Awardee or allocatee and if such entity: (i) Has submitted complete and timely reports to the Fund that demonstrate noncompliance with a previous assistance, award or allocation agreement; and (ii) the Fund has yet to make a final determination as to whether the entity is in default of its previous assistance, award or allocation agreement, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, pending full resolution, in the sole determination of the Fund, of the noncompliance. If the prior Awardee or allocatee in question is unable to satisfactorily resolve the issues of noncompliance, in the sole determination of the Fund, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

3. *Default status:* If, at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. Further, if at any time prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the applicant or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program and is in default of a previously executed assistance, allocation or award agreement(s), the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement, until said prior Awardee or allocatee has submitted a complete and timely report demonstrating full compliance with said agreement within a timeframe set by the Fund. If said prior Awardee or allocatee is unable to meet this requirement, the Fund reserves the right, in its sole discretion, to terminate and rescind the Notice of Award and the award made under this NOFA.

4. *Termination in default:* If (i) within the 12-month period prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that an Awardee that is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls within the 12-month period prior to the application deadline of this NOFA, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement. Further, if (i) within the 12-month period prior to entering into an Assistance Agreement through this NOFA, the Fund has made a final determination that another entity that Controls the Awardee, is Controlled by the Awardee or shares common management officials with the Awardee (as determined by the Fund), is a prior Fund Awardee or allocatee under any Fund program whose award or allocation was terminated in default of such prior agreement; and (ii) the final reporting period end date for the applicable terminated agreement falls within the 12-month period prior to the application deadline of this NOFA, the Fund reserves the right, in its sole discretion, to delay entering into an Assistance Agreement.

5. *Deobligated awards:* An Awardee that receives an FA award pursuant to this NOFA for which an amount over $200,000 is deobligated by the Fund subsequent to the expiration of the period of award funds availability (generally, any funds deobligated after the September 30th following the year in which the award was made) but within the 12 months prior to the application deadline, may not apply for a new award through another NOFA for a CDFI or NACA Program funding round after the date of said deobligation.

B. Assistance Agreement

Each Applicant that is selected to receive an award under this NOFA must enter into an Assistance Agreement with the Fund in order to receive disbursement of award proceeds. The Assistance Agreement will set forth certain required terms and conditions of the award, which will include, but not be limited to: (i) The amount of the award; (ii) the type of award; (iii) the approved uses of the award; (iv) the approved Target Market to which the funded activity must be targeted; (v) performance goals and measures; and (vi) reporting requirements for all Awardees. FA and FA/TA Assistance Agreements under this NOFA generally will have three-year performance periods; TA-only Assistance Agreements generally will have two-year performance periods.

The Fund reserves the right, in its sole discretion, to terminate the Notice of Award and rescind an award if the Awardee fails to return the Assistance Agreement, signed by the authorized representative of the Awardee, and/or provide the Fund with any other requested documentation, within the deadlines set by the Fund.

In addition to entering into an Assistance Agreement, each Awardee that receives an award either (i) in the form of a loan, equity investment, credit union shares/deposits, or secondary capital, in any amount, or (ii) a FA grant in an amount greater than $500,000, must furnish to the Fund an opinion from its legal counsel, the content of which will be specified in the Assistance Agreement, to include, among other matters, an opinion that the Awardee: (A) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (B) has the authority to enter into the Assistance Agreement and undertake the activities that are specified therein; and (C) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Assistance Agreement. Each other Awardee must provide the Fund with a good standing certificate (or equivalent documentation) from its state (or jurisdiction) of incorporation.

C. Reporting

1. *Reporting requirements:* The Fund will collect information, on at least an annual basis, from each Awardee including, but not limited to, an Annual Report that comprises the following components: (i) Financial Report (not required of Sponsoring Entities); (ii) Institution Level Report; (iii) Transaction Level Report (for Awardees receiving FA); (iv) Financial Status Report (for Awardees receiving TA); (v) Uses of Financial Assistance and Matching Funds Report (for Awardees receiving Financial Assistance); (vi) Explanation of Noncompliance (as applicable); and (vii) such other information as the Fund may require. Each Awardee is responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually is completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Institution Level Reports, Transaction Level Reports, Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided. The Fund will use such information to monitor each Awardee's compliance with the requirements set forth in the Assistance Agreement and to assess the impact of the NACA Program. The Institution Level Report and the Transaction Level Report must be submitted through the Fund's web-based data collection system, the Community Investment Impact System (CIIS). The Financial Report may be submitted through CIIS, or by fax or mail to the Fund. All other components of the Annual Report may be submitted to the Fund in paper form or other form to be determined by the Fund. The Fund reserves the right, in its sole discretion, to modify these reporting requirements if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Awardees.

2. *Accounting:* The Fund will require each Awardee that receives FA and TA awards through this NOFA to account for and track the use of said FA and TA awards. This means that for every dollar of FA and TA awards received from the Fund, the Awardee will be required to inform the Fund of its uses. This will require Awardees to establish separate administrative and accounting controls, subject to the applicable OMB Circulars. The Fund will outline in the Assistance Agreement the format and content of the information to be provided on an annual basis, outlining and describing how the funds were used. Each Awardee that receives an award must provide the Fund with the required complete and accurate Automated Clearinghouse (ACH) form for its bank account prior to award closing and disbursement.

VII. Agency Contacts

The Fund will respond to questions and provide support concerning this NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of this NOFA through Monday, December 17, 2007. The Fund will not respond to questions or provide support concerning the applications that are received after 5 p.m. ET on said dates, until after the respective funding application deadline. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* The Fund will post on its Web site responses to questions of general applicability regarding the NACA Program.

A. Information Technology Support

Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from creating an Investment Area map using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. Programmatic Support

If you have any questions about the programmatic requirements of this NOFA, contact the Fund's Program office by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. Grants Management Support

If you have any questions regarding the administrative requirements of this NOFA, including questions regarding submission requirements, contact the Fund's Grants Management unit by e-mail at *grantsmanagement@cdfi.treas.gov,* by telephone at (202) 622–8226, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. Compliance and Monitoring Support

If you have any questions regarding the compliance requirements of this NOFA, including questions regarding performance on prior awards, contact the Fund's Compliance Manager by e-mail at *cme@cdfi.treas.gov,* by telephone at (202) 622–8226, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

E. Legal Counsel Support

If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled ''How to Request a Legal Review,'' found on the Fund's Web site at *http://www.cdfifund.gov.* Further, if you wish to review the Assistance Agreement form document from a prior funding round, you may find it posted on the Fund's Web site (please note that there may be revisions to the Assistance Agreement that will be used for Awardees under this NOFA and thus the sample document on the Fund's Web site is provided for illustrative purposes only and should not be relied on for purposes of this NOFA).

F. Communication with the CDFI Fund

The Fund will use its myCDFIFund Internet interface to communicate with Applicants and Awardees under this NOFA. Applicants must register through myCDFIFund in order to submit a complete application for funding. Awardees must use myCDFIFund to submit required reports. The Fund will notify Awardees by e-mail using the addresses maintained in each Awardee's myCDFIFund account. Therefore, the Awardee and any Subsidiaries, signatories, and Affiliates must maintain accurate contact information (including contact person and authorized representative, e-mail addresses, fax numbers, phone numbers, and office addresses) in their myCDFIFund account(s). For more information about myCDFIFund, please see the Help documents posted at *https://www.cdfifund.gov/myCDFI/Help/Help.asp.*

VIII. Information Sessions and Outreach

The Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's

Information Sessions, dates and locations, or to register to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: October 23, 2007.

Kimberly A. Reed,

Director, Community Development Financial Institutions Fund.

[FR Doc. E7–21495 Filed 10–31–07; 8:45 am]

BILLING CODE 4810–70–P

Thursday,

November 1, 2007

Part II

Department of Education

34 CFR Parts 674, 682 and 685

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682 and 685

[Docket ID ED–2007–OPE–0133]

RIN 1840–AC89

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The Secretary is amending these regulations to strengthen and improve the administration of the loan programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA).

DATES: *Effective Date:* These regulations are effective July 1, 2008.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that institutions, lenders, guaranty agencies, and loan servicers that administer Title IV, HEA programs may, at their discretion, choose to implement §§ 674.38, 674.45, 674.61, 682.202, 682.208, 682.210, 682.211, 682.401, 682.603, 682.604, 685.204, 685.212, 685.301, and 685.304 of these final regulations on or after November 1, 2007. For further information, see the section entitled Implementation Date of These Regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For information related to Simplification of the Deferment Process, Loan Counseling for Graduate or Professional Student PLUS Loan Borrowers, Mandatory Assignment of Defaulted Perkins Loans, Reasonable Collection Costs, and Child or Family Service Cancellation, Brian Smith. Telephone: (202) 502–7551 or via Internet: *brian.smith@ed.gov.*

For information related to Accurate and Complete Copy of a Death Certificate, NSLDS Reporting Requirements, Maximum Loan Period, and Frequency of Capitalization, Nikki Harris. Telephone: (202) 219–7050 or via Internet: *nikki.harris@ed.gov.*

For information related to Total and Permanent Disability, Certification of Electronic Signatures on Master Promissory Notes (MPNs) Assigned to the Department, Record Retention Requirements on MPNs Assigned to the Department, Eligible Lender Trustees, and Loan Discharge for False Certification as a Result of Identity Theft, Gail McLarnon. Telephone: (202) 219–7048 or via Internet: *gail.mclarnon@ed.gov.*

For information related to Prohibited Inducements and Preferred Lender Lists, Pamela Moran. Telephone: (202) 502–7732 or via Internet: *pamela.moran@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to any of the contact persons listed in this section.

SUPPLEMENTARY INFORMATION: On June 12, 2007, the Secretary published a notice of proposed rulemaking (NPRM) for the Perkins Loan, FFEL and Direct Loan Programs in the **Federal Register** (72 FR 32410).

In the preamble to the NPRM, the Secretary discussed on pages 32411 through 32427 the major changes proposed in that document to strengthen and improve the administration of the loan programs authorized under Title IV of the HEA. These include the following:

- Amending §§ 674.38, 682.210, and 685.204 to allow institutions that participate in the Perkins Loan Program, FFEL lenders, and the Secretary to grant a deferment under certain circumstances to a borrower if another FFEL lender or the Department has granted the borrower a deferment for the same reason and time period.
- Amending §§ 674.38, 682.210, and 685.204 to allow a Perkins, FFEL or Direct Loan borrower's representative to apply for an armed forces or military service deferment on behalf of the borrower.
- Amending §§ 674.61, 682.402, and 685.212 to allow the use of an accurate and complete photocopy of an original or certified copy of the death certificate, in addition to the original or a certified copy of the death certificate, to support the discharge of a Title IV loan due to death.
- Amending §§ 674.61, 682.402, and 685.213 to restructure the regulations governing the discharge of a Perkins, FFEL or Direct Loan based on the borrower's total and permanent disability to clarify and provide additional explanation of the eligibility requirements.
- Amending §§ 674.61, 682.402, and 685.213 to provide for a prospective conditional discharge period to establish eligibility for a total and permanent disability discharge that is up to three years in length and begins on the date that the Secretary makes the initial determination that the borrower is totally and permanently disabled.
- Amending §§ 674.16, 682.208, and 682.414 to require institutions, lenders, and guaranty agencies to report enrollment and loan status information, or any other Title IV-related data required by the Secretary, to the Secretary by the deadline established by the Secretary.
- Amending §§ 674.19, 674.50, and 682.414 to require an institution or lender to maintain the original electronic promissory note, plus a certification and other supporting information, regarding the creation and maintenance of any electronically-signed Perkins Loan or FFEL promissory note or Master Promissory Note (MPN) and provide this certification to the Department, upon request, should it be needed to enforce an assigned loan. Institutions and lenders are required to maintain the electronic promissory note and supporting documentation for at least three years after all loan obligations evidenced by the note are satisfied.
- Amending §§ 674.19 and 674.50 to require an institution that participates in the Perkins Loan Program to retain records showing the date and amount of each disbursement of each loan made under an MPN for at least three years from the date the loan is canceled, repaid or otherwise satisfied and require the institution to submit disbursement records on an assigned Perkins Loan, upon request, should the Secretary need the records to enforce the loan.
- Amending § 682.409 to require a guaranty agency to submit the record of the lender's disbursement of loan funds to the school for delivery to the borrower when assigning a FFEL loan to the Department
- Amending §§ 682.604 and 685.304 to require entrance counseling for graduate or professional student PLUS Loan borrowers and modify the exit counseling requirements for Stafford Loan borrowers who have also received PLUS Loans.
- Amending §§ 682.401, 682.603, and 685.301 to eliminate the maximum 12-month loan period for annual loan limits in the FFEL and Direct Loan programs.
- Amending §§ 674.8 to permit the Secretary to require assignment of a Perkins Loan if the outstanding principal balance on the loan is $100 or more, the loan has been in default for seven or more years, and a payment has

not been received on the loan in the preceding 12 months, unless payments were not due because the loan was in a period of authorized forbearance or deferment.

• Amending § 674.45 to limit the amount of collection costs a school may assess against a Perkins Loan borrower to 30 percent for first collection efforts; 40 percent for second collection efforts; and, in cases of litigation, 40 percent plus court costs.

• Amending § 674.56 to clarify the eligibility requirements for a Perkins Loan borrower to qualify for a child or family service cancellation.

• Amending §§ 682.200 and 682.401 to incorporate into the regulations specific rules for lenders and guaranty agencies on prohibited inducements and activities and permissible activities in accordance with the recommendations of the Department's Task Force on these issues.

• Amending §§ 682.200 and 682.602 to reflect the provisions of The Third Higher Education Extension Act of 2006, Public Law 109–202, that prohibit a FFEL lender from entering into a new eligible lender trustee (ELT) relationship with a school or a school-affiliated organization as of September 30, 2006, but allowing such relationships in existence prior to that date to continue with certain restrictions.

• Amending § 682.202 to provide that a lender may only capitalize unpaid interest on a Federal Consolidation Loan that accrues during an in-school deferment at the expiration of the deferment.

• Amending §§ 682.208, 682.211, 682.300, 682.302, and 682.411 regarding loan discharge for false certification as a result of identity theft.

• Amending §§ 682.212 and 682.401 to specify requirements that a school must meet if it chooses to provide a list of recommended or preferred FFEL lenders for use by the school's students and their parents, and prohibit the use of a preferred lender list to deny a borrower the right to use a FFEL lender not included on a school's list.

In addition to the changes that strengthen and improve the administration of the loan programs authorized under HEA, these final regulations also incorporate certain statutory changes made to the HEA by the College Cost Reduction and Access Act (CCRAA) (Pub. L. 110–84). These changes are:

• Amending §§ 674.34, 682.210, and 685.204 to extend the military deferment to all Title IV borrowers regardless of when their loans were made, eliminate the 3-year limit on the military deferment and add a 180-day period of deferment following the borrower's demobilization as of October 1, 2007.

• Amending §§ 674.34, 682.210, and 685.204 to authorize a 13-month deferment following conclusion of their military service for certain members of the Armed Forces who were enrolled in a program of instruction at an eligible institution at the time, or within 6 months prior to the time the borrower was called to active duty as of October 1, 2007.

• Amending §§ 674.34 and 682.210 to revise the definition of economic hardship to allow a borrower to earn 150 percent of the poverty line applicable to the borrower's family size as of October 1, 2007.

• Amending §§ 682.202 and 685.202 to reduce interest rates on subsidized Stafford loans made to undergraduate students as of July 1, 2008.

• Amending § 682.302 to reduce special allowance payments for loans first disbursed on or after October 1, 2007 and establish different rates for eligible not-for-profit lenders and other lenders.

• Amending § 682.305 to increase the loan fee a lender must pay to the Secretary from 0.50 to 1.0 percent of the principal amount of the loan for loans first disbursed on or after October 1, 2007.

• Amending § 682.404 to reduce the percentage of collections that a guaranty agency may retain from 23 to 16 percent and to decrease account maintenance fees paid to guaranty agencies from 0.10 to 0.06 percent as of October 1, 2007.

• Removing § 682.415 to eliminate the ''exceptional performer'' status as of October 1, 2007.

Because these amendments implement changes to the HEA made by the CCRAA, we do not discuss them in the *Analysis of Comments and Changes* section.

Waiver of Proposed Rulemaking—Regulations Implementing the CCRAA

Under the Administrative Procedure Act (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to issuing final regulations. In addition, all Department regulations for programs authorized under Title IV of the HEA are subject to the negotiated rulemaking requirements of section 492 of the HEA. However, both the APA and HEA provide for exemptions from these rulemaking requirements. The APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. Similarly, section 492 of the HEA provides that the Secretary is not required to conduct negotiated rulemaking for Title IV, HEA program regulations if the Secretary determines that applying that requirement is impracticable, unnecessary or contrary to the public interest within the meaning of the HEA.

Although the regulations implementing CCRAA are subject to the APA's notice-and-comment and the HEA's negotiated rulemaking requirements, the Secretary has determined that it is unnecessary to conduct negotiated rulemaking or notice-and-comment rulemaking on these regulations. These amendments simply modify the Department's regulations to reflect statutory changes made by the CCRAA, and these statutory changes are either already effective or will be effective within a short period of time. The Secretary does not have discretion in whether or how to implement these changes. Accordingly, negotiated rulemaking and notice-and-comment rulemaking are unnecessary.

There are no significant differences between the NPRM and these final regulations resulting from public comments.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the loan programs authorized under Title IV of the HEA, the Secretary is using the authority granted her under section 482(c) to designate certain provisions of the regulations, identified in the following paragraph, for early implementation at the discretion of each institution, lender, guaranty agency, or servicer, as appropriate.

In accordance with the authority provided by section 482(c) of the HEA, the Secretary has determined that for some provisions there are conditions that must be met in order for an institution, lender, guaranty agency, or servicer, as appropriate, to implement those provisions early. The provisions subject to early implementation and the conditions are—

Provision: Sections 674.38, 682.210, and 685.204 that simplify the deferment granting process and allow a borrower's representative to request a military service deferment or an Armed Forces deferment.

Condition: None.

Provision: Sections 674.61, 682.402, and 685.212 that allow the use of an accurate and complete photocopy of the original or certified copy of the borrower's death certificate to support the discharge of a Title IV loan due to death.

Condition: None.

Provision: Sections 682.603, 682.604, 685.301, and 685.304 that require entrance counseling requirements and modify exit counseling for graduate or professional student PLUS borrowers.

Condition: None.

Provision: Section 674.45 that limits the amount of collection costs a school may assess against a Perkins Loan borrower.

Condition: None.

Provision: Section 682.202 that limits the frequency of capitalization on Federal Consolidation loans to quarterly, except that a lender may only capitalize unpaid interest that accrues during an in-school deferment at the expiration of the deferment.

Condition: None.

Provision: Sections 682.208 and 682.211, which allow a lender to suspend credit bureau reporting for 120 days and grant borrowers a 120-day forbearance on a loan while the lender investigates a false certification as a result of an alleged identity theft.

Condition: None.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM published on June 12, 2007, 241 parties submitted comments on the proposed regulations. An analysis of the comments and the changes in the regulations since publication of the NPRM and as a result of public comment follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

Simplification of Deferment Process (§ 674.38, 682.210, and 685.204)

Comments: Commenters were generally supportive of our proposal to simplify the deferment process. Some commenters, however, had suggestions for modifications.

The proposed regulations would allow a borrower's representative to request a military service or Armed Forces deferment on behalf of the borrower. Some commenters recommended that we define ''borrower's representative'' for purposes of a military service or Armed Forces deferment. However, several other commenters did not think it was necessary to define ''borrower's representative.''

One commenter recommended that the Department revise the regulations to require (rather than just allow) lenders to grant military service deferments to eligible borrowers based upon a request from the borrower's representative.

With regard to the simplified deferment granting procedures, some commenters recommended that we require, rather than allow, lenders to grant deferments under the proposed procedures.

One commenter noted that interest does not accrue on subsidized FFEL or Direct Loans, or on Perkins Loans, during deferment periods and recommended that borrowers with these types of loans not be required to make an initial deferment request.

One commenter recommended that the notification of a deferment to a borrower of unsubsidized loans include information on the cost of the deferment.

One commenter recommended that we adopt a comparable simplified forbearance process for schools that participate in the Perkins Loan Program. This commenter felt that Perkins Loan schools should be able to grant forbearances based on a forbearance granted on a borrower's FFEL or Direct Loan. This commenter also requested that we allow borrowers in the Perkins Loan Program to verbally request a forbearance on their loans.

Several commenters recommended that we modify the regulations to permit a lender to grant a deferment ''during'' the same time period as a deferment granted by another lender. This would allow the deferment dates of a deferment granted by one lender to be part of the deferment period granted by another lender. The commenter noted that the dates of the deferment periods may not be exactly the same based on the status of the loans held by each of the lenders and the applicability of the deferments to the separate loans.

Discussion: The Department agrees with the commenters who recommended that we not define the term ''borrower's representative'' for purposes of a military service or Armed Forces deferment. A borrower's representative would be a member of the borrower's family, or another reliable source. We do not think it is necessary to regulate a specific definition of the term ''borrower's representative.'' We believe allowing flexibility in this regard will be especially helpful to borrowers called to active duty and stationed overseas in areas of conflict. Defining ''borrower's representative'' could unnecessarily limit access to this benefit for those most deserving of it. Commenters also overwhelmingly supported our decision not to define the term ''borrower's representative.''

We also agree with the recommendation that lenders should be required to accept a military service or Armed Forces deferment request from a borrower's representative. We believe that the proposed regulations would require lenders to accept such deferment requests and we have not changed that language.

However, we believe the simplified process that applies to other types of deferments should be optional for lenders. While many lenders may welcome the simplified deferment requirements as a convenience, other lenders may prefer to grant deferments based on their own review of a borrower's deferment documentation. We intend that these amended regulations will provide lenders with flexibility in structuring their processes for granting deferment requests; we do not want to unnecessarily limit their flexibility.

We disagree with the suggestion that lenders be allowed to grant deferments to borrowers with subsidized loans or Perkins Loans without a request from the borrower. We believe that the borrower who is ultimately liable for the loan should be responsible for deciding whether to request a deferment.

We disagree with the recommendation that schools participating in the Perkins Loan Program be allowed to grant forbearances based on forbearances granted on the borrower's FFEL Program loans. The mandatory forbearance requirements in the FFEL Program differ from the forbearance requirements in the Perkins Loan Program. Additionally, given that Perkins schools have wide flexibility in granting forbearances in the Perkins Loan Program, the Department sees no value in allowing schools to base Perkins forbearances on forbearances granted in the FFEL Program.

We also disagree with the recommendation that we allow deferments to be granted ''during'' the same time period as another deferment under the simplified procedures. If the applicability of the deferment and the status of the separate loans is not the same, the simplified deferment process cannot be used because the loan holder would need to obtain separate documentation verifying the eligibility of the borrower based on different dates.

Changes: None.

Accurate and Complete Copy of a Death Certificate (§§ 674.61, 682.402 and 685.212)

Comments: Many commenters supported the proposed changes in §§ 674.61, 682.402, and 685.212 to allow loan holders to use an accurate and complete photocopy of a death certificate to discharge a Title IV loan due to the death of a borrower. The commenters agreed that this approach will reduce the cost of securing additional original or certified copies of a death certificate for the surviving family members and decrease burden for loan holders.

Several commenters suggested that the language in §§ 674.61, 682.402, and 685.212 be revised to allow a loan holder to use other data sources to grant a loan discharge based on the death of the borrower, such as official court documents, the National Student Loan Data System (NSLDS), or the Social Security Administration's (SSA's) Death Master File. Two commenters suggested that the Department allow loan holders to use NSLDS to ''look back'' and discharge loans for a deceased borrower that were not included in an original discharge due to the death of the borrower.

Discussion: During the negotiations concerning these regulations, some non-Federal negotiators asked the Department to expand the types of documentation that could be used to support a request for a discharge based on the death of the borrower. Specifically, these negotiators asked that they be allowed to base discharges on documentation from NSLDS, SSA's Master Death file or court documents. We declined to adopt these proposals in order to guard against fraud and abuse in the discharge process. The SSA has publicly acknowledged that its Master Death file contains inaccuracies. For that reason, we do not consider the file to be appropriate for use in granting a death discharge and continue to believe that we should not expand the types of documentation for program integrity reasons.

The Department agrees that using NSLDS to identify the loans of a deceased borrower that were not included in a discharge based on the death of the borrower is worth exploring; however, for program integrity reasons we do not agree that NSLDS information alone should be the basis for discharging loans that were not included in the original discharge. The Department will give further consideration to the commenters' suggestion but declines to adopt the suggestion in these final regulations.

Change: None.

Comments: While supporting the Department's efforts to decrease the burden on families applying for a discharge, one commenter expressed concern that fraudulent photocopies would be used to secure a discharge based on the death of the borrower, thus threatening the integrity of the Title IV loan programs. Another commenter recommended that the Secretary conduct a study of how the process for granting requests for discharges based on the death of the borrower will work before issuing final regulations allowing use of a photocopy.

Discussion: We appreciate the commenter's concern about the possible use of fraudulent photocopies of death certificates and will closely monitor the use of this documentation. We do not believe a study is necessary at this time. An official death certificate is very difficult to alter and we expect loan holders to be vigilant when using a photocopy as the basis for a death discharge. To ensure the integrity of the Title IV loan programs, the granting of a discharge of a Title IV loan based on the accurate and complete photocopy of an original or certified copy of the original death certificate is still at the discretion of lenders and the Secretary.

Change: None.

Total and Permanent Disability Discharge (§§ 674.61, 682.402, and 685.213)

Comment: Many commenters supported our proposals to restructure the regulations in §§ 674.61, 682.402, and 685.213 to clarify the eligibility requirements a borrower must meet to receive a total and permanent disability loan discharge and to provide for a similar process across the three loan programs. Several commenters also supported the requirement for a three-year conditional discharge period beginning on the date the Secretary makes an initial determination that the borrower is totally and permanently disabled.

Discussion: We appreciate the commenters' support. Upon further internal review, we believe that the Perkins Loan Program regulations could be clearer with respect to the information that an institution must provide to a borrower upon receipt of the borrower's discharge application.

Changes: The Department has made changes to § 674.61(b)(2) of the Perkins Loan Program regulations to provide a more detailed description of the information that must be provided to a borrower upon the institution's receipt of an application for a discharge.

Comment: Several commenters supported the proposal in §§ 674.61(b)(2)(i), 682.402(c)(2), and 685.213(b)(1) requiring a borrower seeking a total and permanent disability discharge to submit the completed application within 90 days of the date the physician certifies the application, thus ensuring that the loan holder has timely and accurate information on which to base a preliminary determination about the borrower's eligibility for the discharge. However, other commenters believed that the 90-day time limit would be insufficient for a borrower who may be incapable of managing his or her affairs or unable to put together the paperwork necessary to submit the application. The commenters also stated that the proposed time limit would not accommodate delays in the process that are out of the borrower's control. The commenters suggested that the Secretary make exceptions to the 90-day time limit to accommodate extenuating circumstances so that borrowers will not be required to obtain a new physician certification if the borrower misses the 90-day time limit. One commenter suggested that we adopt a 180-day time limit for submission of the discharge application.

Discussion: The Department continues to believe that the requirement in §§ 674.61(b)(2)(i), 682.402(c)(2), and 685.213(b)(1) that borrowers submit the completed application for a total and permanent disability discharge to the loan holder within 90 days of the date the physician certifies the application is appropriate and reasonable. Allowing exceptions based on extenuating circumstances or allowing a 180-day time limit would not ensure that the Secretary has accurate and timely information on which to base her determination on the borrower's application. Allowing exceptions or a longer time limit would also open up the possibility that a borrower might inadvertently take action that would disqualify the borrower for a final discharge.

Changes: None.

Comment: Several commenters noted that the proposed regulations do not provide for a 60-day administrative forbearance that is provided to a borrower under the current FFEL regulations for completion and submission of the discharge application form. The commenters were concerned that the omission of the forbearance would increase delinquency on borrower accounts and penalize the borrower. One commenter recommended that we require lenders to suspend collection activity and provide a forbearance to a borrower who is attempting to complete a discharge application as well as during any period while the application is pending.

Discussion: Section 682.402(c)(5) of the proposed regulations allows a lender to grant a borrower a forbearance of payment of both principal and interest if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's letter requesting additional time to complete and certify the borrower's discharge application. Under § 674.33(d)(5) of the Perkins Loan Program regulations, an institution is required to forbear payment on a loan for any acceptable reason. In the Direct Loan Program, § 685.205(b)(5) specifically allows the Secretary to grant a borrower an administrative forbearance for the period of time it takes the borrower to submit appropriate documentation indicating that the borrower has become totally and permanently disabled. Given that these provisions provide a borrower with significant access to forbearance while obtaining a physician's certification and completing the discharge application, the Department believes that requiring the cessation of collection activity is unnecessary until the loan holder actually receives the discharge application.

Changes: None.

Comment: Several commenters stated that we should continue our current practice of using the date the borrower became totally and permanently disabled instead of the date the physician certifies the borrower's disability on the application as we proposed in §§ 674.61(b)(3)(ii), 682.402(c)(3)(ii), and 685.213(c)(2) as the date to establish the borrower's eligibility for a discharge. The commenters claimed that using the date the physician certifies the application as the date the borrower became totally and permanently disabled is arbitrary and contradicts statutory intent that disabled borrowers receive immediate relief as of the date the borrower becomes totally and permanently disabled.

Several commenters stated that many borrowers do not realize they have the ability to obtain a discharge of their student loans and as a result do not apply for a total and permanent disability discharge until several years after becoming disabled. These commenters expressed concern that using the date the physician certifies the borrower's application as the disability date combined with a prospective conditional discharge period would subject these borrowers to a long delay in receiving the discharge.

One commenter stated that, in the FFEL Program, using a date identified by a physician as the borrower's disability date ensures that only one date of disability appears on all applications and forms received by the Secretary when the borrower has multiple loans. The commenter believes that under the proposed changes to the disability discharge process, the start date of the three-year conditional discharge period for a borrower who has multiple loans may vary for each loan because loans can be assigned to the Secretary at different times in the discharge process based on when the borrower submits documentation to each lender when the lender files the claim with the guarantor, and when the guarantor reviews and pays the claim.

Several commenters questioned the Department's contention that certifying physicians rely solely on a borrower's statements in determining the borrower's date of disability and that there may not be strong medical evidence for using a different date to establish eligibility for Federal benefits. The commenters did not believe that it was appropriate for the Department to assume that a physician's diagnostic methodology is flawed.

Discussion: Sections 437(a) and 464(c)(1)(F) of the HEA provide for the discharge of a borrower's Title IV loans if the borrower becomes totally and permanently disabled as determined in accordance with regulations of the Secretary. As discussed in the preamble to the NPRM, the Department proposed these regulatory changes to eliminate the possibility that a final discharge would be made immediately upon assignment of the account to the Department. We believe this result is inconsistent with the intent of these regulations, which is to conform the discharge requirements to those of other Federal programs that only provide for Federal benefits after appropriate monitoring of the applicant's condition.

The Department believes that borrowers are sufficiently informed about the availability of a total and permanent disability discharge. The promissory notes used in the Title IV loan programs notify borrowers of the possibility to have the loan discharged if the borrower becomes totally and permanently disabled. Information on the discharge is also available on the Department's Web site and in numerous Department publications as well as in information from other program participants. Although a borrower may experience a delay before receiving a total and permanent disability discharge under these regulations, we wish to emphasize again our belief that the provision of Federal benefits should be made only after there is sufficient monitoring of the applicant's condition.

We do not agree that using a date identified by a physician as the borrower's disability date instead of the date the physician certifies the borrower's disability on the discharge application means that a borrower with multiple loans assigned to the Department has only one date of disability. The Department addresses this and similar issues frequently under the current total and permanent disability discharge process and resolves discrepancies in disability dates on assigned loans by consulting with the physician that certified the borrower's application. The Department expects to continue this approach to resolve discrepancies under the new process and does not believe the regulations need to specifically address issues related to processing an application.

Lastly, the Department does not agree that the concern we expressed in the NPRM that there may not be strong medical evidence to support using the borrower's disability date assumes a flawed diagnostic methodology on the part of the certifying physician. As we stated in the preamble to the NPRM, we believe that the best date to use as the eligibility date is the date the physician certified the application because that process requires the physician to review the borrower's condition at that time, rather than speculate about the borrower's condition in the past.

Changes: None.

Comment: Several commenters disagreed with the Secretary's opinion that a three-year prospective conditional discharge period would help prevent fraud and abuse in the Title IV loan programs by allowing the Secretary to monitor a borrower's status before granting a discharge. The commenters stated that whether the conditional discharge period is prospective or retroactive is irrelevant as long as the Secretary has access to a physician's certification confirming that the borrower meets the eligibility requirements for a disability discharge.

Several commenters also disagreed with the Department's statement in the preamble to the NPRM that there have been instances when borrowers have received otherwise disqualifying Title IV loans and earnings in excess of allowable levels after the date of the borrower's disability discharge application but also after the date of the borrower's retroactive final discharge. The commenters cited an analysis of a sample of total and permanent disability cases that they claimed did not support the Secretary's view.

Several commenters acknowledged the need to protect the integrity of the Title IV programs in regard to disability discharges and stated that reliance on a single physician's certification or determination of permanent disability may encourage fraud and abuse in the discharge process.

Discussion: In a Final Audit Report published in November 2005, the Department's Inspector General concluded that the current, three-year conditional discharge period was ineffective for ensuring that a borrower is totally and permanently disabled because it does not always allow the Department to examine the borrower's current earnings and loan information. As a result, a borrower who is not currently disabled could receive a disability discharge even though the borrower has received current disqualifying income or loans. The Inspector General's Audit Report noted that approximately 54 percent of the borrowers who received disability discharges applied for the discharge more than three years after the disability. As a result, for the discharges approved by the Department from July 1, 2002, through June 30, 2004, approximately 54 percent (2,593 borrowers) were based on a three-year period during which there was no examination of the borrower's current income. The Inspector General examined current income information that was available for a limited number of these borrowers who had submitted a Free Application for Federal Student Aid (FAFSA) and found that a number of borrowers who claimed to be totally and permanently disabled also reported current income over the limit for a disability discharge. As a result the Inspector General recommended that the Department revise the regulations to ensure that current income and Title IV loan information is considered when determining whether a borrower is totally and permanently disabled.

The proposed regulations address the Inspector General's concerns and we believe they will discourage fraud and abuse in the disability discharge process. To further ensure against the possibility of fraud and abuse, we have added a provision to the Perkins, FFEL and Direct Loan Program regulations specifically reflecting the Secretary's authority to require a borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is disabled. As part of this review, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the applicant.

Changes: We have amended §§ 674.61(b)(4), 682.402(c)(4), and 685.213(d) to provide that the Secretary reserves the right to require additional medical evidence of a borrower's total and permanent and disability as well as an additional review of the borrower's condition by an independent physician at the Secretary's expense.

Comment: Many commenters disagreed with the Department's proposal in §§ 674.61(b)(5), 682.402(c)(4)(iii), and 685.213(d)(3)(ii) that only payments made on the loan after the date the physician certifies the borrower's total and permanent disability discharge application would be returned to the borrower. The commenters claimed this proposal would harm borrowers who do not obtain a timely certification of disability or who continue to make payments to keep from defaulting or becoming delinquent on their loans. One commenter recommended that repayments be refunded back to the date certified by the physician even if a prospective conditional discharge period is required.

One commenter recommended that no payments previously made on a loan be returned to a borrower if the borrower receives a final discharge based on a total and permanent disability.

One commenter requested that we clarify to whom the Secretary returns payments after a final determination of the borrower's total and permanent disability is made in § 674.61(b)(5)(iii).

Discussion: As stated in the preamble to the NPRM, the Department proposed this change to be consistent with the decision to rely on the date the physician certifies the borrower's disability on the application and to maintain program integrity in the administration of the discharge process. Under these regulations, the borrower's disability date is the date the physician certifies the borrower's discharge application. In this situation, there is no basis for returning payments made by the borrower, or on the borrower's behalf, before that date. However, it is appropriate to return any payments made by or on behalf of the borrower after that date.

Lastly, the Secretary returns any payments to the individual who made the payments after a final determination of the borrower's total and permanent disability is made. We agree that the regulations should reflect this fact.

Changes: Sections 674.61(b)(5)(iii), 682.402(c)(4)(iii), and 685.213(d)(3)(ii) have been changed to reflect that any payments made after the date that the physician certified the borrower's application for a disability discharge will be sent to the person who made the payment after the final discharge is issued.

Comment: Several commenters felt that the prospective three-year conditional discharge period should begin on the date the physician certifies the borrower's total and permanent disability discharge application rather than on the date the Secretary makes an initial determination that the borrower is totally and permanently disabled. The commenters stated that using the date the Secretary makes the initial determination would be unfair to borrowers. The commenters also believed that using the date the Secretary initially determines that a borrower is disabled weakens the Secretary's incentive to make expeditious decisions on disability discharge applications and increases the likelihood that a borrower might inadvertently take an action that would disqualify him or her for a final discharge. One commenter recommended that the final regulations set a time limit for the Department to make a determination of a borrower's initial eligibility for a disability discharge.

Discussion: The Department has considered the comments and has decided that beginning the prospective three-year conditional discharge period on the date the physician certifies the borrower's total and permanent disability discharge application rather than on the date the Secretary makes an initial determination that the borrower is totally and permanently disabled is appropriate and will not increase the opportunity for fraud in the disability discharge process.

Changes: We have revised §§ 674.61(b)(3)(i), 682.402(c)(3)(i), and 685.213(c)(2) to provide that the three-year conditional discharge period begins on the date the physician certifies the borrower's total and permanent disability discharge application.

Comment: Several commenters requested that we apply the same eligibility standards that apply during the conditional discharge period (which prohibit the receipt of any additional Title IV loans and allow a borrower to earn no more than 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act) to the period between the date the borrower obtains a physician's certification and the date the Secretary makes her initial determination that the borrower is totally and permanently disabled. The commenters believed that applying different eligibility requirements at different stages in the process would confuse borrowers and jeopardize their ability to qualify for a discharge.

Discussion: The Department has considered the comments and agrees that applying the same eligibility standards beginning on the date the borrower obtains the physician's certification on the total and permanent disability discharge application and continuing those standards throughout the prospective three-year conditional discharge would reduce the complexity of the process without creating an opportunity for fraud.

Changes: We have revised §§ 674.61(b)(4)(i), 682.402(c)(4)(i), and 685.213(d)(1) to provide that a borrower may not receive any Title IV loans or earn more than 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act, beginning on the date the physician certifies the borrower's discharge application and throughout the prospective three-year conditional discharge period.

Comment: One commenter requested that the proposed regulations be clarified to define the term ''new Title IV loan'' to exclude subsequent disbursements of a prior loan.

Discussion: The Department does not believe that such a change is necessary. The regulations in §§ 674.61(b)(2)(iv)(C)(*2*) and (*3*), 682.402(c)(4)(i)(B) and (C), and 685.213(b)(2)(ii)(A) and (B) already differentiate between new loans and subsequent disbursements of prior loans.

Changes: None.

Comment: One commenter requested that the effective dates and trigger dates in the proposed regulations be carefully evaluated so that borrowers who are in the process of having discharge forms certified are not subject to the new requirements. Another commenter requested that the effective date of any new regulations governing the disability discharge process be based on the approval date of a new Federal form to eliminate processing confusion and inadvertent delays for applicants.

Discussion: The Department anticipates that both the new total and permanent disability discharge applications and the final regulations that govern the process will be effective on July 1, 2008, for borrowers who apply for a discharge on or after that date. Borrowers who are in the process of having discharge forms certified as of that date will not be subject to the new regulations.

Changes: None.

Comment: One commenter suggested the Secretary return Perkins Loan accounts to the school that assigned them if the Secretary determines that the borrower is not totally and permanently disabled. The commenter stated that if such accounts were returned to the school, the school's Perkins Loan revolving fund would benefit from any repayments made when the school resumes collection.

Discussion: The current assignment process in § 674.50 of the Perkins Loan Program regulations requires that, upon accepting assignment of a loan, the Secretary acquire all rights, title, and interest of the institution in that loan. Returning an assigned Perkins Loan account to the school if the Secretary determines that a borrower is not totally and permanently disabled would add administrative burden to the process and is inconsistent with current regulatory requirements in § 674.50(f)(1).

Changes: None.

Comment: One commenter suggested that if the Secretary makes an initial determination that the borrower's disability is not total and permanent, the borrower should not only resume repayment but should also be required to repay all amounts that would have been due during the cessation of collection on the loan while the application was being processed by the loan holder and the Secretary.

Discussion: The Department believes that to require a borrower to repay all amounts that would have been due during the cessation of collection on the loan while the application is being processed would unnecessarily discourage borrowers who might qualify for a discharge from applying.

Changes: None.

Comment: One commenter felt that the Department should consider disability determinations made by other Federal agencies such as the SSA or the Veteran's Administration (VA) in determining whether borrowers are eligible for a disability discharge on their Title IV loans.

Discussion: The Department has previously considered the idea of applying the disability standards used by other Federal agencies to borrowers seeking a discharge of their Title IV loans. However, the definition of total and permanent disability used in the Department's discharge process is appropriately more demanding than that used by SSA and the VA. Those agencies use regular medical reviews of applicants over a number of years to ensure that the applicants remain eligible for benefits. In those programs, an individual loses benefits if they are no longer disabled. In contrast, the Department is providing a significant benefit to an individual on a one-time basis without any opportunity to conduct future reviews to determine if the individual is actually disabled. The Secretary believes that the process established in these regulations provides an appropriate process that will ensure that only appropriate discharges are granted.

Changes: None.

NSLDS Reporting (§§ 674.16, 682.208, 682.401, and 682.414)

Comment: Many commenters did not agree with proposed § 682.401(b)(20), which would change the timeframe in which guarantors must report certain student enrollment data to the current loan holder from 60 days to 30 days. The commenters believed that this change would not accommodate timely reporting in months that have 31 days. Other commenters stated that guarantors currently report information to NSLDS at least monthly and that changing the requirement for guarantors to report enrollment information to lenders to 30 days would not improve the timeliness of information. One commenter believed that the Secretary did not appropriately consider all the other established reporting periods and deadlines when developing this proposal, and that new NSLDS reporting requirements will unnecessarily burden schools with additional reporting.

One commenter asked how the Department intends to categorize Perkins Loan data that are reported to NSLDS under the new regulations. The commenter noted that historically schools categorized and reported Perkins Loans based on the terms and conditions of the loan and reported disbursements made under these categories as one loan made over a period of years. A school would create a new category of Perkins Loan when the terms and conditions of Perkins Loans were affected by statutory changes. The commenter believed that reporting Perkins Loans as separate loans each award year would dramatically increase the number of loans reported to NSLDS and increase burden and costs associated with NSLDS reporting. The commenter noted that new NSLDS reporting criteria would increase the number of Perkins Loan account records and associated costs of reporting with no benefit to the institution or borrowers.

Three commenters stated that the language in paragraph (j) of proposed § 674.16 fails to reflect the intent of Section 485B of the HEA which specifically provides that the development of NSLDS reporting timeframes be accomplished according to mutually agreeable solutions based on consultation with guaranty agencies, lenders and institutions. The commenters stated that the Department has not devoted sufficient effort to conducting a meaningful dialogue and information exchange with institutions about reporting needs for research and policy analysis purposes.

Several other commenters suggested that there should be weekly updates to NSLDS instead of the suggested 30 days and believed that guaranty agencies, servicers, students, and schools would benefit from having more accurate and timely information in NSLDS.

Discussion: The Secretary believes that the new NSLDS reporting timeframes will improve the timeliness and availability of information important to managing the student loan program. The Secretary also believes that the proposed regulatory changes, such as the simplification of the deferment granting process, will be easier and more efficiently implemented if timely and accurate information is more readily available in NSLDS.

The Department appreciates the commenters' concerns about the cost associated with increased reporting of Perkins Loans. Although the costs incurred by institutions to make the systems changes necessary to comply with new NSLDS reporting requirements are difficult to estimate, we believe that requiring institutions to report Perkins Loans on an award year basis, as FFEL and Direct Loan Program loans are reported, will increase the quality and integrity of Perkins Loan data and allow the Department to make meaningful comparisons between the Title IV loan programs for research and budgeting purposes. We also believe that reporting Perkins Loans on an award year basis will provide borrowers with a more accurate picture of their total indebtedness.

The Department regularly consults with program participants in setting NSLDS reporting requirements in established workgroups that meet several times a year. We believe the regulations reflect this consultative process.

With regard to the commenter who suggested that there should be weekly updates to NSLDS instead of the suggested 30-day timeframe, entities that wish to report to NSLDS on a weekly basis are able to so under current protocols. We decline to require weekly reporting requirements for all entities at this time, however, because we believe that small institutions would find such a standard difficult to manage.

The Secretary agrees with commenters that the 30-day reporting timeframe does not leave guarantors adequate time to report data to the current loan holder in months that have 31 days.

Changes: We have changed the reporting timeframe in § 682.401(b)(20) to 35 days.

Certification of Electronic Signatures on Master Promissory Notes (MPNs) Assigned to the Department (§§ 674.19, 674.50, 682.409, and 682.414)

Comment: One commenter agreed that proper execution and retention of electronic loan records is necessary for program integrity reasons. Several other commenters stated that the proposed changes in § 674.19(e)(2)(ii) requiring a school participating in the Perkins Loan Program to develop and maintain a certification of its electronic signature process were overly broad, would discourage schools from using electronic notes, and would impose burdensome new record-keeping requirements. Other commenters stated that institutional compliance with these new requirements would be difficult unless the Department clearly defines these new requirements and provides schools with a "safe harbor" of minimum compliance standards for Perkins Loans already signed electronically by borrowers. The commenters stated that the burden of complying with § 674.50(c)(12)(i) for institutions would be difficult to justify given the few borrowers who might dispute the validity of the electronic signature at some future date.

Several commenters stated that the requirement in § 674.50(c)(12)(ii)(B) that a school's certification include screen shots as they would have appeared to the borrower is impractical and unnecessary and asked that this requirement be eliminated.

Discussion: The Department believes that the requirements in § 674.19(e)(2) that an institution create and maintain a certification regarding the creation and maintenance of electronically signed Perkins Loan promissory notes or MPNs in accordance with § 674.50(c)(12) ensures that the school and the Department have the evidence to enforce an assigned loan if a challenge or factual dispute arises in connection with the validity of the borrower's electronic signature. Schools are required to take legal action to collect on a defaulted Perkins Loan in accordance with § 674.46 of the Perkins Loan Program regulations. If a legal challenge to the validity of an electronic signature should arise in the course of litigating a defaulted Perkins Loan, a school will be in a much stronger legal position to prove that the borrower signed the loan and benefited from the proceeds of the loan. The need to ensure the integrity of the Perkins Loan Program justifies establishing electronic signature safeguards. Perkins Loan schools should generally not be incurring new costs or burden related to the certification of electronic signatures on promissory notes. In July of 2001, the Department published its Standards for Electronic Signature in Electronic Student Loan Transactions (Standards) to facilitate the development of electronic processes under the Electronic Signatures in Global and National Commerce Act (E-Sign Act). These Standards provided guidance to FFEL Program lenders and guaranty agencies, and to schools in their role as lenders under the Perkins Loan Program, regarding the use of electronic signatures in conducting student loan transactions, including using electronic promissory notes. At that time, we informed loan holders and institutions in the FFEL or Perkins Loan Program that if their processes for electronic signature and related records did not satisfy the Standards and the loan was held by a court to be unenforceable based on those processes, the Secretary would determine on a case-by-case basis whether Federal benefits would be denied, in the case of the FFEL Program, or whether a school would be required to reimburse its Perkins Loan Fund, in the case of the Perkins Loan Program. If, as we assume, Perkins Loan holders are complying with the Standards, added burden or cost should not be an issue. The regulations in § 674.50(c)(12) that describe what the certification must include are already very specific and detailed and a "safe harbor" is unnecessary. The only provision of these regulations that is not specific is

§ 674.50(c)(12)(ii)(F), which requires the certification to include ''all other documentation and technical evidence requested by the Secretary to support the validity or the authenticity of the electronically signed promissory note.'' This provision is not intended to be overly burdensome on schools. This provision is intended to cover whatever documentation a school has that is not already listed in § 674.50(c)(12)(ii)(A) through (E).

Lastly, the Department does not agree with the commenters' suggestion that inclusion of screen shots as they would have appeared to the borrower is impractical or unnecessary. The inclusion of screen shots in the certification is a critical part of the process to ensure that the promissory note is a valid, legal document, that the terms and conditions of the loan were properly represented to the borrower, and that the borrower was fully aware of the fact he or she was receiving a loan.

Changes: None.

Comment: One commenter suggested that the Department require each institution that participates in the Perkins Loan Program to designate an ''E-Sign Contact Person'' on its FISAP submission to enable institutions to meet documentation requests from the Secretary in a timely manner.

Discussion: The Department believes this suggestion has merit and will consider implementing this proposal administratively. However, no change to the regulations is necessary.

Changes: None.

Comment: Many commenters stated that the 10-business day deadline required by §§ 674.50(c)(12)(iii) and 682.414(a)(6)(iii) within which Perkins Loan and FFEL loan holders must respond to a request for evidence that may be needed to resolve a dispute with a borrower on a loan assigned from the Secretary was too short. One commenter recommended a 10-business day standard only if the request relates to pending litigation and an alternative, 30-day standard if the request is not related to litigation. One commenter recommended delaying implementation of the 10-business day deadline by one year to give institutions the opportunity to put in place the systems, policies, and capability to comply and produce the requested documentation. One commenter suggested adopting a 15-business day deadline with an option to appeal if the institution faces a special situation. Another commenter suggested a 25-business day deadline. One commenter requested that the Secretary withdraw this proposal completely.

Discussion: The Department does not believe that a 10-business day deadline to respond to requests from the Secretary for evidence needed to resolve a dispute involving an electronically-signed loan that has been assigned to the Secretary is burdensome. The Department believes that 10 business days provides sufficient time for loan holders. The Secretary believes that a timely response to a request for information is essential to proper enforcement of a promissory note, especially when a borrower is contesting the validity of an electronic signature and that challenge involves court proceedings or court-imposed deadlines. Finally, we believe that delaying implementation of this deadline or not imposing any deadline would threaten the integrity of the FFEL and Perkins Loan Programs.

Changes: None.

Comment: Several commenters expressed concern regarding the provision in proposed § 674.50(c)(12)(i)(B), under which the Department would require a Perkins Loan holder to provide testimony to ensure the admission of electronic records in a legal proceeding. These commenters requested that the Department clarify that the institution will not be responsible for any expenses related to this requirement.

Discussion: Section 489 of the HEA and 34 CFR § 673.7 of the General Provisions regulations for the Federal Perkins Loan, Federal Work Study, and Federal Supplemental Educational Opportunity Grant Programs provide for an administrative cost allowance that an institution may use to offset its cost of administering the campus-based programs, including the costs related to the provision of testimony.

Changes: None.

Comment: One commenter requested that the Department revise § 682.409(c)(4)(viii), which would require a guaranty agency to provide the Secretary with the name and location of the entity in possession of an original, electronically signed MPN that has been assigned to the Department. The commenter asked that we change this provision to give guaranty agencies the option of providing the Secretary the name and location of the entity that created the original MPN or promissory note in response to the Secretary's request. The commenter believed this approach would provide flexibility for loan holders to continue to track the entity that created the original electronically signed MPN, while providing flexibility for new technological changes that may allow subsequent holders to obtain possession of an original electronic MPN record. This commenter also recommended a change in § 682.414(a)(6)(i) to allow the ''entity'' that created or the ''entity in possession'' of an original electronically signed promissory note respond to a request for information from the Secretary rather than the guaranty agency or lender that created the note for the same reason.

Discussion: We disagree with the commenter that allowing a guaranty agency the option of providing the Secretary with the name and location of the entity that created the original MPN or promissory note meets the Department's needs. We also disagree that the ''entity'' that created or that is in possession of the original electronically signed promissory note would be the more appropriate party to respond to a request for information from the Department. If the Department needs the original, electronically signed MPN, it should be a simple matter for a guaranty agency to provide the name and location of the entity that possesses the document. Moreover, the lender and guaranty agency are the program participants that have the legal obligation to maintain program records and cooperate with the Secretary to enforce loan obligations.

Changes: None.

Comment: One commenter supported the provisions in §§ 674.19(e)(4)(ii) and 682.414(a)(5)(iv) requiring loan holders to retain an original of an electronically-signed MPN for three years until all the loans on the MPN are satisfied but requested clarification in the regulations as to the meaning of the term ''satisfied.''

Discussion: The FFEL, Perkins and Direct Loan Program regulations already define when a loan is ''satisfied.'' In all three programs, a loan is ''satisfied'' if the loan has been canceled, repaid in full or discharged in full. In the Perkins Loan Program, a loan is also considered ''satisfied'' if the loan has been repaid in full in accordance with an institution's authority to compromise on the repayment of a defaulted loan in accordance with § 674.33(e) or the institution writes off the loan in accordance with § 674.47(h). Accordingly, we do not believe any further clarification in the regulations is needed.

Changes: None.

Comment: One commenter stated that the proposed regulations requiring a FFEL Program loan holder to retain an original of an electronically-signed MPN for three years after all the loans are satisfied is unmanageable. This commenter recommended that FFEL Program lenders be required to submit electronic signature certifications and authentication records to the guarantor at the time a claim is submitted. The commenter believed that this approach would ensure that certification and authentication records are available and submitted consistently and promptly with each loan the guarantor assigns to the Department.

Discussion: The Department carefully considered this approach during negotiated rulemaking, but after considering comments made during that process, we determined that, at this time, it would not be necessary to require FFEL Program lenders to submit electronic signature certifications and authentication records to the guarantor at the time a claim is submitted. Instead, consistent with our understanding of how paper notes are being handled in the student loan industry, we have adopted the framework contained in these final regulations, which puts the responsibility for managing the electronic promissory notes and ensuring their continued enforceability on the lenders and guaranty agencies that created them.

Changes: None.

Comment: One commenter recommended that the Department adopt the accessibility standards of section 101(d) of the E-Sign Act, which requires that electronic records ''remain accessible to all persons who are entitled to access * * * in a form that is capable of being accurately reproduced for later reference'' rather than the standard in proposed § 682.414(a)(6)(iv), which requires a guaranty agency to provide the Secretary with ''full and complete access'' to electronic loan records. The commenter believed that the standard as currently proposed is burdensome and ambiguous. The commenter also requested a change in terminology in § 682.414(a)(6)(iv) that would require the ''entity in possession'' of the original electronically signed promissory note rather than the holder be responsible for ensuring access to electronic loan records.

Discussion: The Department disagrees that using the accessibility standards of section 101(d) of the E-Sign Act rather than the standard in proposed § 682.414(a)(6)(iv) is appropriate and believes that the term ''full and complete access'' is clear and straight forward. The Department also does not agree with the suggestion that we substitute the term ''entity in possession'' of the original electronically signed for ''holder'' in § 682.414(a)(6)(iv). We believe the term ''entity'' is too vague for the purposes of these regulations.

Changes: None.

Comment: Several commenters suggested that the Department modify the regulations to include a provision that would end the requirement for certification of electronic signatures on MPNs after five years to evaluate the impact of the provisions on schools that participate in the Perkins Loan Program.

Discussion: The Department does not believe it is necessary or advisable to ''sunset'' the provisions requiring the certification of electronic signature on MPNs after five years. These requirements are essential to the integrity of the Title IV loan programs and the Department's ability to enforce electronically-signed, assigned promissory notes. Additionally, the Department can evaluate the impact of these regulations without establishing a sunset date for these provisions.

Changes: None.

Comment: Several commenters requested that we establish a prospective effective date for the provisions requiring the certification of electronically-signed notes that includes only promissory notes signed on or after the effective date of the final regulations to allow program participants sufficient lead time to implement the changes.

Discussion: The Department does not agree that these requirements should only apply to electronically-signed promissory notes made on or after July 1, 2008. As stated above in response to another comment, in July of 2001, the Department published Standards to facilitate the development of electronic processes under the E-Sign Act. We assume that FFEL Loan and Perkins Loan holders are complying with those standards and, therefore, should be ready to comply with these new requirements on July 1, 2008.

Changes: None.

Record Retention Requirements on Master Promissory Notes (MPNs) Assigned to the Department (§§ 674.19, 674.50, 682.406, and 682.409)

Comment: One commenter suggested that the Department collect the Perkins Loan Program MPN and the records showing the date and amount of each disbursement of Perkins Loan Program funds at the time the loan is assigned to the Department and require an institution to respond to requests for information on an assigned loan for three years following assignment, rather than require the institution to retain the MPNs and disbursement records. The commenter believed that this approach would reduce burden and prevent data corruption or archiving problems for Perkins Loan Program institutions and would allow the Department immediate access to MPNs and disbursement records if the records were needed to enforce the loan.

Discussion: The current Perkins Loan Program assignment procedures outlined in Dear Colleague Letter CB–06–12 (August 1, 2006) require a school to submit the original or a certified true copy of the promissory note upon assignment of the loan to the Department. The requirement in § 674.19(e)(4)(ii) that an institution retain an original electronically signed MPN for three years after all the loans made on the MPN are satisfied applies to loans that have not been assigned to the Department. The regulations in § 674.50(c)(11) allow the Secretary to request a record of disbursements for each loan made to a borrower on an MPN that shows the date and amount of each disbursement on a Perkins Loan that has been assigned to the Department. If a school wishes to submit the disbursement records to the Department when assigning a Perkins Loan, the school may do so.

Changes: None.

Comment: Several commenters asked that the Department implement a process to notify a Perkins Loan Program school when an assigned loan has been satisfied so that the school does not incur additional cost and burden when determining when it can destroy documentation supporting its electronic authentication and signature process and disbursement records.

One commenter suggested that the Department provide schools the option to retain documentation supporting the school's electronic signature process and disbursement records for at least three years after the loan is assigned to the Secretary, rather than when the loan is satisfied, so that schools would know exactly when the three-year period begins and ends.

Discussion: The Department believes that implementing a process to notify a school participating in the Perkins Loan Program that an assigned loan has been satisfied has merit and will explore the possibility for implementing such a process. Such a process, however, does not need to be reflected in the regulations.

The Department continues to believe that it is vital for a school to retain disbursement records and documentation supporting its authentication and electronic signature process for at least three years from the date the loan is canceled, repaid or otherwise satisfied so that the Department has access to the documents if needed to enforce an assigned loan and to ensure the continued integrity of the Perkins Loan Program.

Changes: None.

Comment: Several commenters stated that the new record retention provisions requiring schools participating in the Perkins Loan Program to retain disbursement and electronic authentication and signature records for each loan made using an MPN for at least three years from the date the loan is canceled, repaid or otherwise satisfied were unduly burdensome.

The commenters requested that instead of retaining a copy of each screen shot as it would have appeared to the borrower, the Department should require institutions to retain a ''description'' of each screen shot. The commenter also stated that requiring schools to retain ''all other documentary and technical evidence supporting the validity and authenticity of an electronically-signed note'' was so open-ended that schools would be forced to retain all material on the chance that the Department might request it at some future date.

Discussion: As discussed earlier in this section, the Department believes that the retention of records will make it easier for the Department or the school to prove that a borrower benefited from the proceeds of a loan and will preserve program integrity. Moreover, we do not believe this requirement is overly burdensome or costly because it is consistent with the Department's current requirements and record storage experience. When the MPN was implemented in the Perkins Loan Program, schools were advised in Dear Colleague Letter CB–03–14 to retain documentation to support a borrower's loan transactions should the school need to enforce a loan made under a Perkins MPN. When the Perkins Loan Program MPN was updated and reissued in June of 2006, schools were specifically directed in Dear Colleague Letter CB–06–10 to retain disbursement records to support a borrower's loan transactions. This guidance, together with the record retention provisions in 34 CFR 668.24 that require a school to retain disbursement records for three years after the disbursement is made, ensures that schools should be in possession of the required records already. Further, existing Assignment Procedures in Dear Colleague Letter CB–06–12 specifically require schools to retain disbursement records on assigned loans made under an MPN until the loan is paid-in-full or otherwise satisfied and submit those records if requested to do so by the Department. As we stated in response to an earlier comment, screen shots are part of the loan making process and also provide evidence that a borrower who signed an MPN or promissory note electronically was aware that he or she was receiving a loan. It is the Department's experience that electronic storage of records supporting Title IV loans transactions are generally cost efficient.

Changes: None.

Comment: One commenter requested that the Department confirm that an institution is only required to retain the documentation and templates that apply to electronically-signed MPNs signed for a specified time period during which the institution's process remained unchanged, and that it will not be necessary for institutions to retain this documentation on a loan-by-loan basis.

Discussion: The commenter is correct that an institution is required to retain the documentation and templates that apply to all of an institution's electronically-signed MPNs for discrete periods of time. We wish to emphasize that should any aspect of an institution's electronic signature process change, the institution must document the new process in the affidavit or certification required by § 674.50(c)(12).

Changes: None.

Comment: One commenter requested that we clarify what would constitute an ''original'' electronically-signed MPN under the proposed Perkins Loan record retention requirements. The commenter stated that if an ''original'' electronically-signed MPN means that a school can print a copy of the signed MPN, the Department should not use the word ''original.'' However, if the Department's intent is to require a school to produce something more than a paper copy of the MPN, the commenter requested that the Secretary provide schools and servicers additional time to ensure their ability to meet the new requirements before the regulations take effect.

Discussion: An institution or its servicers should have a system designed so that the signed electronic record is designated as the ''authoritative'' copy of the promissory note and must be able to reproduce an electronically signed promissory note, when printed or viewed, as accurately as if it were a paper record. The institution or its servicer should enable the viewing or printing of electronic records using commonly available operating systems and hardware. Designation of the electronic note created by the institution as the ''original'' is a useful means for designating the electronic note that the institution must retain under these regulations.

Changes: None.

Comment: One commenter asked that we clarify whether the requirement to retain documentation of the ''date and amount of each disbursement'' of Perkins Loan Program funds referred to records reflecting the date the money was applied to a borrower's account or to records showing the date the funds were awarded. Another commenter requested clarification on the timeframe under which an institution would be required to submit Perkins Loan disbursement records.

Discussion: The requirement to retain documentation of the ''date and amount of each disbursement'' of loan funds refers to the amount and date that Perkins Loan Program funds were applied to a borrower's account. An institution may, but is not required to, submit disbursement records to the Department when it assigns a Perkins Loan. If an institution does not submit the disbursement records to the Secretary when assigning a Perkins Loan, it must retain the records for three years from the date the loan is canceled, repaid, or otherwise satisfied in case the Secretary needs the records to enforce the loan.

Changes: None.

Comment: Several commenters stated that guarantors are not currently required to collect the record of the lender's disbursement of Stafford and PLUS loan funds to a school for delivery to the borrower as part of the claims process nor are they required to submit loan disbursement data under the current process for assigning loans to the Secretary. For these reasons, the commenters stated that disbursement records may not be readily available for submission in the FFEL mandatory assignment process as required by proposed § 682.409(c)(4)(vii). The commenters requested that the Department implement any new guaranty agency reporting obligation prospectively for new Stafford and PLUS loans made under an MPN on and after July 1, 2008 to give sufficient lead time to guarantors and lenders to establish the processes to support this new requirement. Another commenter, again citing the lack of availability of disbursement records through the claims process, recommended that the Secretary require the submission of the record reflecting the date of guarantee instead and only for loans that are under investigation by the Secretary.

Discussion: The Department's longstanding regulations in § 682.414(a)(4)(ii)(D) have directed guaranty agencies to require a participating lender to maintain current, complete, and accurate records of each loan that it holds, including but not limited to, a copy of a record of each disbursement of loan proceeds. Although these records are not collected as part of the claims process, these records must be retained in accordance with § 682.414(a)(4)(ii)(D). For this reason, the Department sees no reason to implement these new regulations prospectively and is confident that guaranty agencies and lenders can implement a process that provides for the submission of disbursement records as part of the mandatory assignment process before the regulations become effective on July 1, 2008.

Changes: None.

Comment: Several commenters suggested that we revise the provision in § 682.414(a)(5)(iv) requiring a lender to retain an original electronically signed Stafford or PLUS MPN for three years after all loans made under the MPN are satisfied to require the ''entity in possession'' of the original electronically signed MPN, rather than the ''holder,'' to retain the note for a period ending on the earlier of 20 years from the date of signature or the date all the loans on the MPN have been satisfied. The commenters stated that this change would address cases when a loan is assigned to another party, such as the guarantor or Secretary, and the lender has no way of knowing when all the loans under the MPN are satisfied. The commenter stated that this change would also address the fact that the life span of record retention technology has a practical limit.

Discussion: As stated in response to comments discussed earlier, the Department believes using the term ''entity'' in the context of § 682.414 is too vague. The intent of the regulations is to create a legal obligation on the lender and guaranty agency that created the promissory note to cooperate with the Secretary.

Changes: None.

Loan Counseling for Graduate or Professional Student PLUS Loan Borrowers (§§ 682.603, 682.604, 685.301, and 685.304)

Comments: Overall, commenters were supportive of the proposed changes to the loan counseling regulations, but some commenters had questions or concerns regarding the proposed changes.

One commenter asked if the notification requirements specified in § 682.603(d) would be met if the information listed were provided to borrowers through the school's financial aid award letter process.

Several commenters noted that the proposed regulations would require schools to provide one set of initial counseling materials to student PLUS borrowers who have received prior Stafford Loans and another set of initial counseling materials to student PLUS borrowers who have not received prior Stafford Loans. The commenters acknowledged that establishing less comprehensive initial counseling requirements for student PLUS borrowers who have already received Stafford Loan initial counseling was intended to minimize burden on schools. However, these commenters stated that separate initial counseling requirements would actually be more burdensome. For some schools, separating student PLUS borrowers into different categories for initial counseling purposes would be more cumbersome than providing the same initial counseling to all student PLUS borrowers.

Several commenters noted that proposed § 682.604(f) is disjointed and hard to follow. These commenters recommended restructuring § 682.604(f).

Discussion: The regulations do not specify a method a school must use to notify a student PLUS Loan borrower of the student's eligibility for a Stafford Loan, the different terms and conditions of PLUS and Stafford loans, and the opportunity to request a Stafford Loan instead of a PLUS Loan. The regulations only specify that this information must be provided to the student before the loan is certified, in the case of a FFEL Loan (see § 682.603(d)), or before the loan is originated, in the case of a Direct Loan (see § 685.301(a)(3)). If the financial aid award letter includes the required information, and is provided to the student before the loan is certified or originated, it would meet the requirements of § 682.603(d) or § 685.301(a)(3), as the case may be.

Many schools no longer provide in-person loan counseling, and instead use electronic, interactive counseling programs. Often these electronic, interactive counseling programs are developed by guaranty agencies and provided to schools. We believe that the benefits of a more informed borrower, particularly for graduate and professional PLUS borrowers who have access to significantly increased loan amounts, outweigh the costs of providing the additional loan counseling. In addition, schools are not required to provide separate counseling for student PLUS borrowers. Schools are not required to develop separate initial counseling materials for student PLUS borrowers with prior Stafford Loans and student PLUS borrowers without prior Stafford Loans. The regulations only specify minimum initial counseling requirements. Schools must provide certain information to PLUS borrowers who have received prior Stafford loans, and must provide certain information to PLUS borrowers who have not received prior Stafford Loans. The regulations do not prohibit schools from exceeding the minimum initial counseling requirements. If a school finds that providing comprehensive initial counseling to all student PLUS borrowers is more cost effective than providing the limited counseling required by the regulations, a school may provide the comprehensive counseling to all student PLUS borrowers.

We agree with the commenters' recommendations regarding the restructuring of § 682.604(f).

Changes: We have restructured § 682.604(f). Revised § 682.402(f) begins with a discussion of initial counseling requirements for Stafford Loan borrowers, then discusses initial counseling requirements for student PLUS Loan borrowers, and ends with a discussion of general initial counseling requirements.

Maximum Length of Loan Period (§§ 682.401, 682.603, and 685.301)

Comment: Commenters were in unanimous support of the Secretary's proposal to eliminate the maximum 12-month loan period for annual loan limits in the FFEL and Direct Loan programs and the 12-month period of loan guarantee in the FFEL Programs. One commenter noted that the regulatory change would require loan origination systems changes. Another commenter noted that the change would require the removal of a system edit used by some guaranty agencies to monitor school loan certification. This commenter asked the Secretary to confirm that this regulatory change would have no impact on a school's reporting to NSLDS.

One commenter asked the Secretary to further clarify in the preamble to these final regulations the relationship of the longer loan period to loan limits and the definition of *academic year.* Another commenter asked that we clarify in the preamble that the intent of the regulations is to avoid potential misunderstandings among schools that might lead to the application of a single Stafford annual loan limit for a period spanning multiple academic years.

Discussion: The Secretary appreciates the commenters' support. The Secretary understands that this regulatory change may require lenders and guaranty agencies to make changes in their loan origination systems. The Secretary believes that the effective date of the regulations under the master calendar provisions of the HEA provides sufficient time for these changes to be made.

The intent of the regulations generally is not to allow schools to certify a single Stafford annual loan limit for a period spanning multiple years, although borrowers attending non-term and certain nonstandard term programs on a less-than-full-time basis may have loan periods that span more than the period associated with an academic year for a full-time student. Schools are still expected to monitor annual loan limit progression by the school's academic year, which must meet at least the minimum standards defined in 34 CFR 668.3. Annual loan limits continue to apply to the academic year or the period of time necessary for a student to progress to the next grade level as referenced in § 682.401(b)(2)(ii). Unless a school uses standard terms and is authorized to certify loans by the term, most loan certifications will also continue to be for the academic year according to the school's defined Title IV academic year.

The proposed changes to §§ 682.401, 682.603, and 685.301 are intended to allow a school to certify a single loan for students in shorter, non-term or nonstandard term programs (for example, a 15 month program when the school's Title IV academic year encompasses 10 months). The change will also provide greater flexibility in rescheduling loan disbursements for students in non-term and certain nonstandard term programs who are progressing academically in their programs more slowly than anticipated, or who drop out and return within the permitted 180-day period to retain Title IV disbursements. The Secretary clarifies that this change has no impact on school reporting to the Department's NSLDS.

Change: None.

Mandatory Assignment of Defaulted Perkins Loans (§§ 674.8 and 674.50)

Justification for Mandatory Assignment

Comments: A large number of schools commented on this proposal, challenging the Department's justification for requiring mandatory assignment of defaulted Perkins Loans. These schools acknowledged that the Department has collection methods unavailable to the schools, but noted that schools have collection methods, such as withholding transcripts and placing administrative holds on services, that the Department does not have.

Many of these schools identified the amount of outstanding Perkins Loan balances they would lose upon implementation of these regulations. These schools argued that the loss of potential collections on these loans removes an income source for their Perkins Loan Fund, and reduces the number of Perkins Loans available to future borrowers. These commenters pointed out that there has been no Federal Capital Contribution (FCC) in the Perkins Loan Program in recent years, and asserted that the mandatory assignment proposal would further deplete a school's Perkins Loan Fund.

These schools also identified their recovery rates on Perkins Loans they hold that are in default for seven or more years. They based their calculations on the outstanding amounts on these loans, and the amounts collected in the preceding three years. Recovery rates reported by the commenters ranged from a low of seven percent to a high of 79 percent. The schools argued that the Department has not demonstrated that it has a higher recovery rate on defaulted Perkins Loans than the schools.

Discussion: The Department acknowledges that schools have collection tools that are unavailable to the Department. However, the low recovery rates reported by many schools indicate that these tools are not generally effective. The mandatory assignment requirements will have little impact on schools that do use these tools effectively to collect on defaulted loans. If even one payment is received on a defaulted loan in the year prior to the Department requiring assignment, the loan would not be eligible for mandatory assignment. In addition, it is our experience that many schools maintain holds on transcripts and other administrative services after they assign Perkins Loans to the Department. We expect that schools will continue this practice for mandatorily assigned loans. The Department's estimated savings resulting from mandatory assignment are provided in the *Accounting Statement* in Table 1 of the Regulatory Impact Analysis.

The Department is aware of the large amount of aged, defaulted Perkins Loans held by schools with little or no collection activity. As noted in the preamble to the NPRM, our records show that schools are holding more than $400,000,000 in such loans. The commenters' submissions identifying the amounts of Perkins Loan funds schools may lose under the regulations illustrate the magnitude of the problem. The data showing large amounts of old defaulted Perkins Loans which schools have been unable to collect supports requiring mandatory assignment.

With respect to the Department's recovery rates, defaulted Perkins Loans that are assigned to the Department under the current voluntary assignment procedures are assigned for such reasons as hardship, incarceration, refusal to pay, and the school's inability to locate the borrower. Schools are required to undertake first-year and second-year collection efforts before assigning Perkins Loans to the Department, although schools may dispense with the second-year collection efforts and assign a loan to the Department after the first year collection efforts have failed. Thus, the defaulted Perkins Loans that are assigned to the Department through voluntary assignment are loans that schools consider uncollectible.

The Department's analysis of its recovery rate on these defaulted Perkins Loans shows that, as of August 30, 2007, the Department's recovery rate is:

- 53.90 percent for loans assigned to us in 2002.
- 45.90 percent for loans assigned to us in 2003.
- 36.02 percent for loans assigned to us in 2004.

The recovery rates show increased collections on defaulted Perkins Loans the longer the Department holds the loans. We believe the Department's recovery rate on defaulted Perkins Loans compares favorably to the schools' self-reported recovery rates. Therefore, we strongly believe that requiring assignment of these loans to the Department, as described in these regulations, is in the best interests of the taxpayers and the government.

Changes: None.

Alternatives to Mandatory Assignment

Comments: Several commenters suggested alternatives to the mandatory assignment proposal. Some commenters suggested that the Secretary re-institute a version of the referral program that existed in the 1980s. Under a referral program, schools could voluntarily assign loans to the Department; the Department would collect on the loans, and would return a portion of the collections to the school that assigned the loan. Other commenters suggested a variation of the referral program under which the Department would return funds not to individual schools, but to the Perkins Loan Program generally. Under this proposal, the amounts the Department collects on assigned loans would be re-allocated to schools participating in the Perkins Loan Program, using the standard allocation formula.

Commenters recommended streamlining the voluntary assignment process, improving the Default Reduction Assistance Program (DRAP), and re-instituting the IRS Skiptracing

Service, as alternatives to mandatory assignment.

Discussion: As discussed in the preamble to the NPRM, the referral program the Department administered in the 1980s was not a success. We continue to believe, and the commenters did not provide us with any basis for modifying our position, that a revival of that program would not be in the Federal fiscal interest.

With regard to the proposals for a streamlined voluntary assignment process and for re-instituting the IRS Skiptracing Service, we note that the Department has already streamlined the voluntary assignment process significantly. We have reduced the supporting documentation required for assignment, simplified the assignment form, and implemented a process allowing for the submission of assignment packages in groups. However, these changes have not significantly increased the number of voluntarily assigned Perkins Loans.

The commenter requesting that we improve DRAP did not indicate what the perceived deficiencies of that program are, or make any specific recommendations for improvements. DRAP is intended as a final effort to prevent a loan that is about to go into default from going into default. Any improvements to DRAP would have little impact on loans that have been in default for seven or more years.

The Department is renewing its computer-matching agreement with the Internal Revenue Service to re-institute the IRS Skiptracing Service. Schools and guaranty agencies that have an approved Safeguard Report will be able to access the Student Aid Internet Gateway (SAIG) to request and receive data through their mailboxes. The Department is currently working to make this service available to guaranty agencies and schools. Announcements on the availability of the IRS Skiptracing Service will be posted to the Department's Information for Financial Aid Professionals (IFAP) Web site. To the extent that the IRS Skiptracing Service is helpful to schools in locating borrowers of defaulted Perkins Loans, it should reduce the number of loans that will meet the criteria for mandatory assignment. We will also consider improving the DRAP program in the future.

Changes: None.

Criteria for Mandatory Assignment

Comments: Many commenters suggested that if the Department requires mandatory assignment of Perkins Loans, it should modify the criteria for mandatory assignment. Generally, commenters recommended increasing the outstanding loan balance and the number of years in default that would trigger assignment from $100 to $1,000 and from seven years to ten years, respectively. Commenters argued that a ten-year period of default made sense, because the maximum repayment period for a Perkins Loan is ten years. One commenter claimed that many defaulted borrowers are willing and able to repay their defaulted loans after five to ten years in default. The commenter asserted that a borrower who has been in default for this length of time is often in a position to take out a mortgage on a home or to obtain a loan for some other large purchase. Such a borrower would seek to repay defaulted Perkins Loans to improve his or her credit report. Another commenter stated that this often occurs after 15 years in default.

Several commenters recommended that we exempt schools with low default rates from the mandatory assignment requirements. Commenters also recommended that accounts on which the schools have acquired a judgment against the borrower be exempted. The commenters noted that schools spend a significant amount of time and effort securing judgments on loans and stated that it was not fair to require schools to assign judgment accounts. One school noted that a judgment may include both private loans and Perkins Loans, making it difficult for the school to separate the Perkins Loan from the private debt for assignment purposes.

Finally, a large number of commenters noted that if the Department required assignment of all loans that meet the criteria for assignment in the proposed regulations, it would result in a huge inventory of assignments. The Department would have difficulty absorbing such a large influx of assigned loans. These commenters recommended that the Department begin mandatory assignment with loans that are 15 years past due, and gradually move towards loans that are seven years past due.

Discussion: In the preamble to the NPRM, we discussed in considerable detail different alternatives for requiring the assignment of defaulted Perkins Loans to the Department.

Rather than attempting to pinpoint a specific time when borrowers tend to be motivated to pay off their defaulted loans, the Department proposed to model the Perkins Loan mandatory assignment requirements on the mandatory assignment requirements in the FFEL Program. Under the mandatory assignment process in the FFEL Program, a FFEL Loan is in default for a little over six years before it is assigned to the Department. Based on that precedent, in these final regulations, the Department has adopted a standard of seven years for Perkins Loans.

Similarly, the standard of a balance of $100 or more on a loan before mandatory assignment will be required is consistent with the requirement for mandatory assignment of FFEL loans. We continue to believe that these standards are reasonable.

We do not agree with the proposal to exempt schools with low cohort default rates from the mandatory assignment requirement. Cohort default rates are based on collections in the first three years after a loan enters repayment status. Cohort default rates do not measure a school's success at collecting on loans that have been in default for several years and are not relevant to the loans that will be subject to mandatory assignment. While it may be correct that schools with low cohort default rates have fewer loans in default for seven years or more than schools with higher cohort default rates, this fact does not support a conclusion that the schools with low cohort default rates are successful at collecting on loans that have been default for seven years or more.

The Department also disagrees with the recommendation that loans on which the school has secured a judgment be exempted from mandatory assignment. Securing a judgment on an account is a helpful collection tool, but it does not ensure that the borrower will make payments on the debt. We acknowledge that Perkins Loans that have been merged into judgments may need to be handled differently than regular Perkins Loans for purposes of mandatory assignment. The Department will develop procedures for the assignment of judgment accounts as the Department operationalizes the mandatory assignment process.

We agree with the recommendation by many commenters that we phase-in mandatory assignment. The regulations establish the minimum criteria for mandatory assignment. The regulations do not preclude the Department from phasing-in mandatory assignment by starting the process with loans that have been in default for more than the seven-year minimum. Phasing-in mandatory assignment will ease disruption to both the schools and the Department.

Changes: None.

Legal Basis for Mandatory Assignment in the Perkins Loan Program

Comments: Some commenters questioned the Department's legal authority to require the assignment of Perkins Loans, arguing that section 463(a)(4)(A) of the HEA provides for mandatory assignment in certain limited circumstances and precludes the Secretary from requiring mandatory assignment in other circumstances.

Discussion: Section 463(a)(9) of the HEA authorizes the Secretary to add provisions to the program participation agreement for schools where the Secretary has determined that the provision is necessary to protect the United States from unreasonable risk of loss. For the reasons discussed in the NPRM and these final regulations, the Secretary has determined that the mandatory assignment regulations as proposed, which will allow the Secretary to require participating schools to assign defaulted loans that meet the criteria in the regulations, are necessary to protect the United States from unreasonable risk of loss. The sections of the HEA cited by the commenters do not prevent the Secretary from exercising her authority under section 463(a)(9) of the HEA.

Changes: None.

Reasonable Collection Costs (§ 674.45)

Collection Cost Caps

Comments: Several commenters stated that the proposed caps on the collection costs that may be charged to borrowers in the Perkins Loan Program are too high, and should be reduced. Generally, these commenters recommended reducing the cap to 24 percent, which would be consistent with the cap on collection costs in the FFEL Program.

One commenter stated that the proposed regulations would not sufficiently limit collection costs. This commenter noted that the Perkins Loan Program is intended to benefit needy students. The commenter argued that it is reasonable to expect that a portion of low-income borrowers receiving Perkins Loans would have difficulty repaying these loans. These borrowers are often the ones least likely to be aware of their repayment options, and most likely to get caught in a spiral of increasing collection costs. As collection costs are added to the loan, the outstanding balance increases so rapidly that the ability to pay off the loan becomes further and further out of reach.

This commenter also challenged the fee-on-fee method of assessing collection costs. Under the fee-on-fee method, collection agencies that charge contingency fees charge a ''make whole rate'' to borrowers. The commenter asserted that many States prohibit or limit the use of make whole rates for other types of consumer debt, and the Department should do likewise for Perkins Loans.

Other commenters, who believed the collection cost caps are too low, supported the use of a make whole rate, and asked the Department not to abandon this approach for the Perkins Loan Program.

Several commenters recommended increasing the collection cost caps. Generally, these commenters recommended increasing the collection cost caps to:

- 33 percent for first collection efforts.
- 40 percent for second collection efforts.
- 50 percent for collection efforts arising out of litigation.
- 50 percent for collection efforts against borrowers living abroad.

Several commenters who recommended increasing or eliminating the collection cost caps argued that the proposed caps will make it financially difficult for schools to collect on defaulted Perkins Loans. These commenters said that schools will have to pay more for collections than they can charge to the students. As a result, schools would charge the difference to the Perkins Loan Fund, thus depleting the Fund. The amount of funds that could then be lent out to future students would be reduced. In response to these comments, other commenters noted that the purpose of assessing collection costs against a borrower is not to create an income stream for schools' Perkins Loan Funds.

Several commenters also argued that the quality of collection efforts will suffer under the proposed collection cost caps.

Discussion: The Department declines to adopt the commenters' recommendation to reduce the collection cost caps to the same level as those in the FFEL Program. Perkins Loans are low-balance loans compared to FFEL loans, but the cost of collection is about the same. Because the return on collecting Perkins Loans is smaller than the return on collecting FFEL loans, we believe that higher collection cost caps are warranted in the Perkins Loan Program. The Department also disagrees with the commenters' recommendations for increasing the collection cost caps. We believe that the caps as proposed strike a fair balance between the concerns of borrowers and the concerns of the Perkins Loan Program schools and collection agencies.

With regard to contingency fees, the Department is not abandoning the make whole rate for Perkins Loan collections. The Department does not regulate the establishment of fees in a contract between a Perkins Loan Program school and a collection agency. However, institutional contracts must provide for the recovery to the Perkins Loan Fund of the outstanding balance of the loan. Since a collection agency incurs additional expenses associated with collecting these amounts, the school may authorize the collection agency to also recover these expenses from the borrower.

Collection agencies frequently charge contingency fees to borrowers. The Department's rule on assessing collection costs on a contingency fee basis to an individual who owes a debt to the Department is in 34 CFR 30.60 and is commonly referred to as the fee-on-fee method. While this method of assessing collection costs is not required in the Perkins Loan Program, many schools and servicers use it because it makes the Fund whole. The make whole rate is the amount by which the borrower's debt is multiplied to determine the amount that the collection agency needs to collect to recover 100 percent of the outstanding balance.

Thus, a collection cost cap of 30 percent means that, for loans collected on a contingency fee basis, the actual collection costs charged to the borrower must be less than 30 percent.

We expect that when these regulations take effect, collection agencies that collect on Perkins Loans will adjust their contingency fees to comply with the new regulatory requirements. Collection agencies that charge a make whole rate to borrowers will have to take that into account when adjusting their contingency fees.

Some schools argue that they have little choice but to agree to high contingency fees when they negotiate contracts with collection agencies. Given the inability of many schools to secure favorable terms with collection agencies collecting on Perkins Loans, the Department believes that the most effective way to reduce these collection costs in the Perkins Loan Program is to mandate collection cost limits.

We agree with the commenters who argued that the purpose of assessing collection costs is not to create an income stream for a school's Perkins Loan Fund. Additionally, § 674.47(e)(3) and (4) limits the amount of unpaid collection costs that a school may charge to the Fund to 30 percent for first collection efforts, and 40 percent for second collection efforts. These limits match the limits on collection costs that may be charged to borrowers established in the final regulations.

Changes: None.

Additional Concerns

Comments: Several commenters raised additional concerns with regard to the proposed caps, or recommended modifications to the proposed regulations. One commenter recommended restricting the amount of collection charges that may be charged to a borrower from average costs to actual costs. This commenter stated that allowing agencies to assess average costs against a borrower is unfair, since the actual collection cost incurred with respect to a particular borrower may be lower than the average costs that the borrower is charged.

Some commenters recommended applying the caps only to collection costs incurred by collection agencies on a contingency fee basis, not on the costs incurred by schools for their own internal collection efforts. These commenters argued that the unreasonably high collection costs seen in the Perkins Loan Program are due to collection agency contingency fees, not collection activities carried out by Perkins Loan Program schools.

Other commenters recommended that the cap on litigated loans be removed, and be replaced by an amount defined by the court.

Another commenter argued that informing borrowers of the new collection cost caps would be administratively burdensome.

Another commenter said the regulations would be inconsistent with § 674.45(e), which requires schools to assess all reasonable collection costs to borrowers.

Discussion: Allowing schools to charge only actual costs to the borrower is unworkable and inconsistent with standard collection practices on student loans and other debts. Requiring lenders to identify specific actual costs for every borrower that the lender collects on would be administratively burdensome and not cost effective.

We do not see any justification for applying the caps only to collection costs incurred by collection agencies. From a borrower's perspective, collection costs are collection costs. It makes little difference whether the costs were incurred by a collection agency or by the school.

With regard to litigated loans, a court may remove all collection charges from a loan as part of a judgment. The regulations establishing collection cost caps on loans that are litigated do not preclude a court from lowering the collection charges or eliminating the collection charges altogether when the court issues a judgment.

The regulations do not impose a requirement that schools notify borrowers of the collection cost caps. Collection costs also are not among the items that a school must discuss during its exit interviews with borrowers.

Finally, the regulations do not conflict with the reasonable collection costs provisions in the existing regulations. As amended by these final regulations, § 674.45 defines ''reasonable collection costs'' chargeable to the borrower as costs within the proposed caps.

Changes: None.

Child or Family Service Cancellation (§ 674.56)

Comment: Commenters were overwhelmingly supportive of the proposed clarifications to § 674.56, regarding cancellation of loans for individuals working in the child or family service areas. However, two commenters had questions about this provision.

To qualify for a child or family service cancellation, among other requirements, an otherwise eligible borrower must be employed full-time by a child or family service agency. One commenter asked if employment by a child or family service agency would disqualify an attorney for the cancellation, because the agency, rather than the children the agency serves, is considered to be the attorney's client.

A second commenter noted that the child or family service cancellation would be one of the hardest cancellations in the Perkins Loan Program to qualify for, and asked if that was the intent of Congress when the law was passed.

Discussion: An attorney who is an employee of a child or family service agency must meet the same eligibility requirements as any other non-supervisory employee of a child or family service agency to qualify for the loan cancellation. The attorney must provide services directly and exclusively to high-risk children from low-income communities.

The determination of whether a borrower qualifies for a discharge is made on a case-by-case basis and would require consideration of the attorney's specific responsibilities. However, in general, if the attorney represents the agency in court, the attorney is not providing services directly to the child.

If the attorney represents children in court such as in the role of a guardian ad litem, the attorney would be considered to be providing services directly to the child. If the other eligibility criteria for the cancellation are met, the attorney would qualify for a child or family service cancellation.

With respect to the comment about the difficulty of qualifying for this cancellation, section 465(a)(2)(I) of the HEA, which establishes the child or family service cancellation, is very narrowly written. The statute requires employment at a certain type of agency and the provision of services to a specific population. The borrower must provide services to children who are both ''high-risk'' and come from ''low-income communities.'' Section 469(a) and (b) of the HEA defines both of these terms. The final regulations are consistent with the statutory language.

Changes: None.

Prohibited Inducements (§§ 682.200 and 682.401)

Comment: Many commenters endorsed the Secretary's efforts to clarify the regulations on improper inducements and improve enforcement of the law, but disagreed with various aspects of the proposed regulations. Several commenters thought the proposed regulations were not sufficiently strict. Several U.S. Senators commended the Secretary on the proposed regulations, particularly the use of the rebuttable presumption to more effectively enforce the anti-inducement requirements. Several commenters thought that the Department's lack of oversight and enforcement of current requirements was a bigger problem than the content of the regulations. One association representing school business officers cautioned against the unintended consequences of the proposed regulations and expressed concern that the regulations could affect the wide range of relationships between colleges and universities and financial institutions. That commenter also noted that financial institutions were very heavily engaged in philanthropic endeavors in higher education and expressed concern that any perceived risk to the lender could result in those needed dollars being invested elsewhere.

One commenter saw no basis for having different rules for lenders and guaranty agencies in regard to prohibited inducements.

Discussion: The Secretary thanks the commenters for their support and comments on this very complex and urgent issue affecting the FFEL Program. The Secretary believes that this regulatory effort will result in clearer regulatory guidelines for schools, lenders, and guaranty agencies participating in the FFEL program. The detailed provisions in the form of permissible and impermissible activities that govern the interaction between lenders, guaranty agencies, and schools will assist these parties in avoiding violations of the law. The increased regulatory clarity and specificity will also improve the Secretary's ability to enforce the law in this area. Student and parents served by the program, and the taxpayers that support it, will have renewed trust in the integrity and transparency of the loan process. Students and parents will clearly understand that they have a choice of lender and can exercise that choice. Absent questionable payments and activities between schools and lenders, students and parents will view a school's financial aid office once again as an unbiased source of information on the FFEL loan process and on the factors a prospective borrower should consider in selecting a lender. Borrowers will be more likely to receive clear comparisons between the benefits offered under the Federal student loan programs and under private education loan programs without concern that prohibited payments or other forms of assistance by a lender to a school will influence a school's counseling such that a borrower receives a loan with less favorable terms and conditions.

The Secretary understands commenters' concerns about unintended consequences for other contractual services performed for schools by financial institutions and their affiliates, and on philanthropic giving to higher education. However, she believes that contracted services between financial institutions and schools in non-student aid related areas will not be affected by these regulations as long as the arrangements are negotiated in good faith and are not undertaken to secure FFEL loan applications or limit a borrower's choice of lender. Likewise, the Secretary believes that financial institutions will continue to provide philanthropic support to institutions. These philanthropic relationships need not change as long as they have not been undertaken to secure FFEL loan applications or limit a borrower's choice of lender. She feels confident that schools and financial institutions will take all the prudent steps necessary to ensure that there are no conflicts of interest between the financial institution's role as a FFEL lender and its philanthropic support of higher education.

Finally, the Department believes that the regulations properly treat guaranty agencies and lenders differently for purposes of improper inducements. Guaranty agencies are responsible for lender and school oversight and training, default prevention, outreach and financial literacy, and lender claim review and payment and the regulations need to recognize the important roles these agencies play in these areas. In contrast, under the HEA, the lender's roles are to provide loans for eligible borrowers and collect those loans in accordance with the Secretary's regulations.

Changes: None.

Comment: Some commenters recommended that the Department clarify in the final regulations that State laws relating to the inducement practices of lenders, schools and loan guarantors within the FFEL Program are preempted.

Discussion: The Department appreciates the commenters' concerns about potential State law conflicts with the Department's inducement-related regulations. It is well settled that any State law that conflicts with or ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives'' of a Federal law is preempted. *Hillsborough County, Fla.* v. *Automated Med. Laboratories, Inc.,* 471 U.S. 707, 713 (1985). Moreover, ''[f]ederal regulations have no less pre-emptive effect than federal statutes.'' *Fid. Fed. Sav. & Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141, 153 (1982). Accordingly, State statutes, regulations, or rules that conflict with or hinder the accomplishment and execution of the Department's rulemaking relating to inducement practices are preempted. We anticipate future negotiated rulemaking to implement the CCRAA and expect to include this issue among those considered for rulemaking at that time.

Changes: None.

Use of a Rebuttable Presumption (§§ 682.413, 682.705(c), and 682.706(d))

Comment: A number of commenters representing students and other members of the public supported the proposal to strengthen the Secretary's enforcement of the prohibition on improper inducements in the FFEL Program.

Many commenters representing various FFEL Program participants objected to the Secretary's proposal to adopt a rebuttable presumption in administrative actions against lenders or guaranty agencies involving violations of the prohibited inducement provisions. One of these commenters argued that the use of a rebuttable presumption was inconsistent with the statutory requirement that the Secretary determine that an inducement was offered in order to secure loan applications. The commenter argued that the HEA includes a broad definition of a prohibited inducement and, as a result, a number of activities would automatically be presumed by the Department to be a violation under the rebuttable presumption approach.

Other loan industry commenters stated that the adoption of a rebuttable presumption was unnecessary given the Department's existing authority to gather information through reviews and audits conducted by the Office of Federal Student Aid and the Office of Inspector General. These commenters claimed that the use of a rebuttable presumption is inconsistent with procedural due process rights and urged that the proposal be withdrawn. These commenters argued that, if the presumption is retained, the regulations must require the Department to have a factual basis supporting the finding of an improper inducement before commencing any proceeding that could result in the lender's limitation, suspension, or termination from the FFEL Program. The commenters also urged that if retained in the regulations, the presumption be applied only with respect to activities occurring prospectively from the general effective date of the regulations.

Discussion: The Secretary thanks the commenters who supported the proposed regulations.

The Secretary has carefully considered the legal arguments presented by the lenders, guaranty agencies and their supporters. However, contrary to those arguments, it is well established that the Secretary has broad authority to establish appropriate regulations and procedures for resolving administrative cases under the HEA, including rules for consideration of evidence and determining the burden of proof. 20 U.S.C. 1082(a)(1); *USA Group Services* v. *Riley*, 82 F.3d 708 (7th Cir. 1996); *Career College Ass'n.* v. *Riley,* 74 F.3d 1265 (D.C. Cir. 1996). The establishment of a rebuttable presumption is within that legal authority. Moreover, the commenters have misinterpreted the effect of a rebuttable presumption. The rebuttable presumption does not eliminate the Secretary's obligation to make a finding that an inducement was provided in exchange for loan applications. Instead, under these procedures, once the Department establishes that a lender or guaranty agency engaged in one of the activities established in these regulations as creating an improper inducement, the lender or guaranty agency then has the opportunity and obligation to show that its purpose for engaging in the activity was unrelated to securing loan applications. The Secretary is still required to make the ultimate finding that the lender or guaranty agency offered an improper inducement and that the inducement was provided to secure loan applications.

The Secretary's list of improper inducements included in § 682.401(d) that are presumed to be offered to secure loan applications is based on our experience in administering the FFEL Program since the publication of Dear Colleague Letter 89–L–129 in February 1989, which addressed improper inducements. Moreover, recent reviews, investigations and reports by the Department's Office of Inspector General, the Comptroller General, Congress and various State Attorneys General have consistently shown that lenders undertake the activities listed in the regulations to secure FFEL Program loan applications. For example, a recent Congressional report documented how a lender that wanted to make loans to students at schools where the lender had not previously made loans began providing services and benefits to the schools. The report quotes directly from internal lender and school documents clearly indicating that the lender performed these activities for the purpose of gaining more loan volume at the schools, and in fact, the lender was successful. In contrast, none of the recent public reports, investigations, testimony and settlement agreements or any of the comments on the proposed regulations suggest that lenders provided services and benefits to schools for any purpose other than to secure loan applicants.

With this background, it is appropriate for the Secretary to place the burden on the lender or guaranty agency to explain its purpose in providing benefits or services to schools. Moreover, in the great majority of cases, the evidence of intent will be directly and solely under the control of the lender or guaranty agency. Accordingly, the Secretary has determined that it is appropriate and consistent with due process to require the lender or guaranty to have the obligation to present that evidence and explain its purpose.

Some of the commenters asked the Secretary to exempt from the improper inducement provisions the situation in which a State guaranty agency or an affiliated lender is performing services for small institutions in accordance with its responsibilities under State law. The Secretary notes that, as described by these commenters, the provision of these services may have a purpose (compliance with State law) other than securing loan applications. This example shows the appropriateness of placing the burden of explanation on the party most likely to have evidence of that purpose.

The Secretary also notes that the rebuttable presumption will only be applied after the Department has previously gathered information from the lender and the lender has had an opportunity to provide an alternative explanation for its actions. The Secretary intends to apply the rebuttable presumption only in those situations where there is significant evidence that the lender or guaranty agency offered or provided the payments or activities to secure FFEL loan applications or FFEL loan volume. Since the rebuttable presumption is a rule of procedure and does not affect any substantive rights or obligations, there is no basis for the delayed effective date suggested by some commenters.

Changes: None.

Application of the Federal Trade Commission (FTC) Holder Rule (§ 682.209(k))

Comment: Several commenters representing FFEL Program loan industry participants opposed our proposal to apply the principles of the Federal Trade Commission's (FTC's) Holder Rule to all FFEL Program loans. These commenters argued that implementation of this proposal will result in significant costs and administrative burden to FFEL Program participants who will be required to defend meritless legal claims brought by borrowers challenging their student loan debts. The commenters urged the Secretary to withdraw the proposal and conduct further studies to identify a sufficient factual basis identifying harm to the FFEL Program that necessitates a regulatory solution of this nature. The commenters believe that any harm intended to be addressed by the proposal is far outweighed by the costs of the proposal. The commenters also believe that the proposal effectively creates a private right of action for borrowers in clear disregard of case law that holds that there is no private right of action under the HEA. The commenters noted that the application of this rule could leave a State court in a position to interpret the Federal inducement regulations to determine whether the Department's version of the FTC Holder Rule applies. The commenters indicated that if the Secretary adopts this proposal the regulations should provide that the claims and defenses that a borrower may assert against a lender are limited to claims or defenses that the borrower could assert against the school, and that the borrower's recovery may not exceed the amount paid on the loan. The commenters indicated that the Secretary should also clarify that the mere existence of a preferred or recommended lender relationship with a school does not trigger application of this Rule.

Other commenters representing consumer and student organizations, and the office of a State attorney general agreed with the Secretary's proposal to adopt and apply the principles of the FTC Holder Rule to the FFEL Program. The commenters argued, however, that our proposed regulations should mirror the FTC Holder Rule in two important areas. The commenters recommended that the regulations be modified to provide that all subsequent holders of a FFEL loan, not just the immediate holder of the loan, are subject to potential claims, and that the full range of FTC claims and defenses apply, not just those related to the loan.

Discussion: We thank those commenters who supported the proposal to incorporate the principles of the FTC Holder Rule into the regulations of the FFEL Program. However, we do not agree with the suggestion from many of those commenters that the Department adopt the specific language of the FTC's own rule. When the Department first incorporated the terms of the FTC Holder Rule into the FFEL Program promissory notes, we made necessary and appropriate modifications to the language of the FTC Holder Rule to correspond to the requirements and regulations of the FFEL Program. The Secretary is incorporating that existing language into these regulations to ensure that they apply to all borrowers in the FFEL Program, no matter what type of school the borrower attends. Accordingly, the Secretary does not believe that a direct incorporation of the FTC Holder Rule into the FFEL Program regulations is appropriate.

The Secretary does not agree with those commenters who generally opposed the inclusion of the principles of the FTC Holder Rule into the FFEL Program regulations. The Secretary believes that this change will eliminate the current difference in legal rights between borrowers attending for-profit institutions (who are covered by the FTC Holder Rule under the FTC's own authority and the FFEL Program promissory note) and those attending non-profit institutions. That distinction arose not because of any education-based policy distinction, but solely because the FTC Holder Rule governed only for-profit institutions with specified lender relationships. Moreover, this change is consistent with a long line of court decisions that found that the HEA does not preempt State laws that allow borrowers to raise State law claims as a defense against collection of a FFEL Program loan unless particular State laws actually conflict with the objectives of the HEA. *Armstrong* v. *Accrediting Council for Continuing Educ. & Training, Inc.,* 168 F.3d 1362 (D.C. Cir. 1999), *cert. denied,* 528 U.S. 1173 (2000). Courts have also concluded that the lack of a private right of action does not preclude the use of violations of the HEA as evidence of the violation of State laws. *College Loan Corp.* v. *SLM Corp.,* 396 F.3d 588, 598–599 (4th Cir. 2005); *Cliff* v. *Payco American Credit, Inc.,* 365 F.3d 1113, 1127–1130 (11th Cir. 2004). Lastly, contrary to the commenters' claims, we do not anticipate a significant increase in risk or costs to lenders. The principles of the FTC Holder Rule have been in the FFEL Program promissory note and applied to loans for attendance at for-profit schools since 1994. The Secretary is not aware of any significant litigation based on this language since that time and the commenters did not present any facts supporting their claims.

Given that the FTC Holder Rule has applied to some student loan borrowers for more than a decade and that the commenters did not present any support based on that experience for their claim that including this provision will increase costs, we do not accept the recommendation for further studies.

We do not believe it is necessary to clarify the effect that a preferred or recommended lender relationship would have on application of the regulation. The regulation is consistent with the language that has been in the FFEL Program promissory notes and the FTC Holder Rule itself in providing that the borrower may assert the actions of the school as a defense against the lender if the school refers borrowers to the lender.

Changes: None.

Exhaustive List of Permissible Activities (§§ 682.200(b) and 682.401(e)(2))

Comment: Many loan industry commenters objected to the inclusion in the regulations of an ''exhaustive'' list of permissible inducement activities for lenders and guaranty agencies, while including a non-exhaustive, illustrative list of prohibited inducement activities. The commenters requested that both lists be illustrative in nature. The commenters stated that the exhaustive nature of the list of permissible activities fails to recognize the dynamic nature of the marketplace and the continual innovation in product delivery and services that result from private sector competition. The commenters believe that it is impossible to prescribe a finite list of permissible activities today that will provide effective guidance for activities developed in the future. The commenters noted that the Secretary declined for this same reason to provide a definitive list of types of assistance to schools that is comparable to the assistance that the Department provides to schools that participate in the Direct Loan Program and in which lenders and guaranty agencies may engage without providing an improper inducement. These commenters recommended that the Secretary follow that same approach with the proposed list of inducement-related permissible activities.

Discussion: The Secretary disagrees with the commenters. She believes that greater clarity is achieved for program participants if a clear and definitive list of permissible activities is provided. She also believes that this approach enhances the Department's ability to enforce the restrictions on improper inducements. The permissible activities listed represent the only ones the Secretary has approved at the current time. The Secretary understands, however, that both statutory changes and the evolution of business practices may require consideration of additional permissible activities in the future. Therefore, similar to the approach for notifying lenders and guaranty agencies of approved activities that are comparable to those provided by the Secretary under the Direct Loan Program, the Secretary will notify lenders and guaranty agencies, through a public announcement, such as a notice in the **Federal Register**, of any additional permissible activities that lenders and guaranty agencies may be authorized to undertake.

Changes: We have revised the definition of *lender* in § 682.200(b) and revised § 682.401(e)(2) to provide for the identification and approval by the Secretary of other permissible services through a public announcement, such as a notice published in the **Federal Register**.

Payments to Individuals and Lender Referral and Processing Fees (§ 682.200(b))

Comment: Several loan industry commenters claimed that the preamble of the NPRM was incorrect in stating that ''Compensation or fees based on the numbers of applications or the volume of loans made or disbursed are improper, regardless of label, under the Department's current and prior policy and would continue to be improper under these proposed regulations.'' The commenters stated that the Department had previously allowed lenders to pay marketing compensation based on the number of applications received, but not based on the number of applications that resulted in funded loans. The commenters asked that the Secretary clarify that this interpretation continues to apply until the effective date of the final regulations, and that any change in policy be applicable to activities occurring on or after July 1, 2008.

The commenters also requested that the reference in the regulation to prohibited payments to ''any individual'' in paragraph (5)(i)(A)(*2*) of the definition of *lender* in § 682.200(b) be removed and replaced with ''any employee of a school or school-affiliated organization'' to clarify the group to which the prohibitions apply. The commenters further requested that the reference to ''processing'' fees be removed in paragraph (5)(i)(A)(*5*) of the definition of *lender* in § 682.200(b) because use of this term could be interpreted as prohibiting longstanding commercial contractual relationships with third-party servicers and other parties that provide anti-money laundering and PATRIOT Act screening, electronic signature processing, loan origination services, loan disbursement services, and escrow agent services to lenders and guaranty agencies.

The loan industry commenters also argued that the regulations would effectively prevent some small non-participating lenders from meeting their Community Reinvestment Act requirements through the student loan program.

Discussion: The commenters did not correctly describe the Department's prior policy guidance regarding application referral programs between lenders and marketing arrangements between lenders and other parties. The Department's policy on marketing and referral fees was specified in Dear Colleague Letter 89–L–129 (February 1989). The Dear Colleague Letter stated that any fee paid for loan applications under a lender referral program or marketing arrangement would be considered a prohibited inducement if the amount exceeded reasonable compensation for the referring lender's or party's processing of loan applications and advertising. Under this policy, the Department approved or did not object if the compensation paid was reasonable compensation for processing of loan applications and advertising. The permitted reasonable compensation could be based on applications referred but not on loans funded or disbursed. This policy statement remains in effect until the effective date of these regulations.

The Secretary disagrees that reference to ''individuals'' should be struck from paragraph (5)(i)(A)(*2*) of the definition of *lender* in § 682.200(b). Section 435(d)(5) of the HEA effectively defines an improper inducement as a payment or other inducements ''to any educational institution or individual'' to secure loan applications. The Secretary has never interpreted the reference to ''individuals'' as limited to employees of a school or a school-affiliated organization.

The Secretary notes that the reference to ''processing'' in paragraph (5)(i)(A)(*5*) of the definition of *lender* in § 682.200(b) was intended to convey, consistent with the Department's longstanding guidance, that the referring party was being compensated for some level of administrative work in processing the application, not just for forwarding the application to the originating lender. However, the Department understands that the term ''processing'' may be confusing and has clarified the language for purposes of the provision.

The Secretary believes that the payment of these referral fees should be treated as an improper inducement for several reasons. The growth of national lenders and banking means that the payment of referral fees paid to non-participating lenders is no longer necessary to ensure nationwide borrower access to the FFEL Program. Moreover, most referral fee arrangements identified by the Department do not involve small local lending institutions, but involve payments by large lenders to school-related organizations. Finally, we note that with the adoption of the MPN and expanded eligibility standards, there is no longer any distinction between applications received and loans made, so there is no reason for distinguishing between them based on these different standards.

The Secretary further believes that payment of referral fees has eroded the integrity of the FFEL Program. Many of these fees are being paid to school-affiliated organizations that have access to certain personal information of students and alumni and are held in a certain level of esteem by students, alumni, and their parents. We believe that these arrangements and payments represent a conflict of interest for the organization and the school with which it is affiliated because the arrangement is interpreted as an endorsement of the lender by the organization and the school. Additionally, these fees do not appear to be paid to compensate the referring party for any administrative work done in processing the application, thus making them a prohibited inducement under the Department's standing interpretive guidance. The Department is also aware that such fees are being paid to individuals and organizations that are not under contract to any lender or its affiliate in an eligible lender trustee arrangement, and that operate as independent brokers collecting FFEL applications and marketing them to various FFEL lenders for the highest fee per application.

Finally, in response to the comments about small lenders who have referred borrowers in exchange for fees to satisfy other legal obligations, we note that the purpose of the FFEL Program is to provide loans for student and parent borrowers, not to provide an opportunity for lenders who do not participate in the program to meet other legal requirements. We expect that these lenders will find other appropriate ways to meet those requirements.

Changes: Paragraph (5)(i)(A)(*5*) of the definition of *lender* in § 682.200(b) has been modified to clarify that prohibited ''processing'' fees do not include fees paid to meet the requirements of other Federal or State laws.

Definition of School-Affiliated Organization (§ 682.200)

Comment: Many commenters objected to the proposed definition of a *school-affiliated organization,* which applies to lender and guaranty agency prohibited inducement activities outlined in §§ 682.200(b) and 682.401(e). The commenters indicated that the definition was overly broad and unworkable. One commenter from a school was concerned that the regulatory changes would restrict these organizations from promoting special arrangements and that it will limit student services through these organizations. The commenters also indicated that the broad definition could include national membership organizations, school trade organizations and other associations that have no ability to establish and administer school policies or control school activities. The commenters also believe that the definition is so broad that it could be applied to cover school credit unions or bookstores that are privately owned but located on or near a campus, or that include a reference to the school in their name. The commenters recommended that the definition be limited to only include those organizations that are part of the school structure even if they are separate legal entities. The commenters believe that those organizations that have a *de minimus* or peripheral connection to the school, and whose activities are organized and conducted separate and distinct from the school, should not be covered by the definition.

Discussion: The Secretary believes that special FFEL student loan marketing or other student loan arrangements with organizations that are affiliated with a school undermine program integrity, and have been used to limit borrowers' choice of FFEL lenders. The Department believes that the definition of *school-affiliated organization* needs to be broad to protect borrowers and the program generally. The definition is intended to include both organizations that exist only by virtue of the school's existence, whether inside or outside of the school's structure and control, and other organizations not dependent upon the school's existence, which provide financial and vocational services to the school's students, employees, or alumni. However, we stress that payments or inducements provided to school-affiliated organizations are only improper if they are undertaken to secure loan applications or loan volume. This regulation does not affect contractual arrangements between the school-affiliated organizations and financial institutions to provide other non-student loan related services. The Secretary fails to see a basis for the organizations identified by the commenters to be engaged in the marketing or making of FFEL Program loans.

Changes: None.

Loan Forgiveness Benefits (§§ 682.200(b) and 682.401(e))

Comment: Many commenters from schools, lenders, guaranty agencies, and State-designated secondary markets objected to the proposal to treat a lender's or guaranty agency's loan forgiveness programs as an improper inducement unless loan forgiveness is provided under a repayment incentive program that requires satisfactory payment performance by the borrower to receive or retain the benefit. Some loan industry commenters stated that this limitation on guaranty agencies and private lenders was contrary to the HEA. They requested that the Department clarify that borrower benefit programs or other loan forgiveness or assistance programs for students for service, academic achievement, disaster assistance, or other targeted activities continue to be allowed. Several commenters representing not-for-profit State and State-affiliated guarantors and secondary markets noted that existing

State targeted and administered loan forgiveness programs for teachers, nurses, and members of the armed forces could be considered prohibited inducements. The commenters believe such a result impinges on State sovereignty and is contrary to the Department's regulatory view that guaranty agencies have responsibility for outreach to students and parents. The commenters noted that these public service loan forgiveness programs are not part of guaranty agency marketing campaigns for applications and request that they be considered a permissible activity by a guaranty agency or State secondary market.

Discussion: The Secretary acknowledges that FFEL Program lenders are authorized under statute to offer borrowers reduced fees and interest rates. The regulations specifically acknowledge that these benefits are not considered improper inducements under § 682.200(b)(5)(ii). The Secretary also acknowledges that the HEA specifically provides for loan discharges for certain targeted forms of employment and public service.

With this provision, however, the Secretary is attempting to distinguish appropriate forms of repayment assistance that may be provided to borrowers by lenders and guaranty agencies that would not be considered an improper inducement from those that are clearly provided in order for the lender to secure loan applications. The regulation incorporates the standard for incentive and reward programs for successful borrower repayment that the Secretary has previously applied. In this regard, the Secretary has previously found that repayment incentive programs do not provide an improper inducement if they provide up-front rebates that are applied to the borrower's account at or shortly after loan disbursement and that the borrower retains if he or she establishes a satisfactory repayment pattern, or provide a similar reduction in loan principal earned on the same basis after the borrower enters repayment. These programs do not involve cash payments to borrowers. These regulations are consistent with this standard.

The Secretary thanks the commenters for informing her of the many public service oriented loan forgiveness programs that have been initiated, some of which are State-mandated or State-approved. The Secretary is convinced that these programs are not used generally for marketing purposes and agrees that these programs should not be considered an improper inducement as long as they are not marketed to secure loan applications or loan guarantees.

Changes: We have revised the definition of *lender* in § 682.200(b) and revised § 682.401(e)(2) to include as *permissible* activities loan forgiveness programs for public service and other targeted purposes approved by the Secretary, provided the benefits are not marketed to secure loan applications or loan guarantees.

Service on Lender and Guaranty Agency Advisory Boards and Payment of Related Costs (§§ 682.200(b) and 682.401(e)(2)(v))

Comment: Several commenters objected to our proposal to treat as an improper inducement, arrangements in which employees of school and school-affiliated organizations serve on lender advisory committees, while allowing these employees to serve on a guaranty agency's governing board or official advisory board. The commenters stated that the lender advisory committee meetings provide meaningful opportunities for lenders and schools to exchange information that benefit borrowers. The commenters argued that uncompensated service of this nature should be permissible, but that reasonable travel costs should be covered to be consistent with the treatment of guaranty agencies. Another commenter representing a lender noted that the regulations did not contain any explicit prohibition on school employees serving on a lender advisory board, or of paid consulting arrangements between lenders and school employees, and that this represented a loophole in the regulations. This commenter also said the Department should not allow school-affiliated organization employees to serve on guaranty agency advisory boards, or allow agencies to pay for travel and lodging costs to facilitate school staff service on an advisory board, attendance at training sessions, or tours of the guaranty agency's service facility. The commenter believes this treatment creates an avenue for guaranty agencies to provide these benefits on behalf of their lender partners and that a guaranty agency's financial support should be limited to meals and refreshments at training conferences.

Discussion: The Secretary notes that the absence of a specific provision permitting school and school-affiliated organization employee service on lender advisory boards, comparable to what is provided for service on guaranty agency advisory boards, means that any compensation for this service is considered to be an improper inducement if provided to secure loan applications. The Secretary disagrees with the commenters who recommended that school and school-affiliated organization employees be permitted to continue service on lender advisory boards, on a paid or unpaid basis, and with travel and lodging expenses paid by the lender. Recent investigations have shown that many of these meetings have largely been designed as expense-paid vacations for the school employees in support of continued or increased loan volume for that FFEL lender from the school. The Secretary believes that these board meetings are not necessary to the proper administration of the FFEL Program.

Unlike lenders, guaranty agencies are responsible for lender and school oversight, school and lender training, default aversion services, lender claim review and approval, and outreach services to students, parents, and schools in their respective areas of service. The Secretary believes that school employee service on a guaranty agency's board, if used effectively, can be important for those aspects of FFEL program administration for which the agency is responsible. In addition, in its role in providing training on the Title IV student aid programs, the agency is in a good position to identify the training needs of staff at schools that may not have sufficient resources to provide or pay for needed training, regardless of whether the school participates in the FFEL Program. Moreover, under § 682.423, a guaranty agency is authorized to use its Operating Fund for school and lender training. The Secretary believes, therefore, that it is appropriate for a guaranty agency to cover the travel and lodging costs of school staff if the agency identifies, on a limited, case-by case basis, that those individuals would otherwise be unable to attend needed training, provide needed service on the agency's governing or advisory board, or on another of the agency's formal working committees.

Changes: For purposes of clarity, we have modified paragraph (5)(i)(A)(*6*) of the definition of *lender* to specifically prohibit a lender from soliciting school employees to serve on a lender's advisory board and paying costs related to this service.

Lender and Guaranty Agency Sponsored Meals, Refreshments, and Receptions at Meetings and Conferences (§§ 682.200(b) and 682.401(e)(2)(iii))

Comment: One commenter representing a lender objected to our proposal to allow lenders and guaranty agencies to continue to sponsor meals, refreshments, and receptions that are reasonable in cost for school officials or employees in connection with meetings and conferences. The commenter believes that permitting these activities will allow abuses that have received negative media attention to continue because there are no defined parameters provided in the regulations about what is ''reasonable'' or what constitutes a ''reception.'' The commenter recommended that these activities be prohibited.

Discussion: The Secretary believes that sponsorship by a lender or guaranty agency of meals, refreshments, and receptions at conferences and other training meetings that are open to all attendees at a conference or meeting do not represent an inducement of the individual attendees or their schools to secure loan applications or loan guarantees for the sponsoring lender or guarantor. This form of sponsorship is a form of generalized marketing that is not prohibited under the law. These arrangements also assist in reducing the cost of needed training conferences and meetings for individual attendees. In using the term ''reception,'' the Secretary does not envision private parties of lender-selected groups of conference attendees, or of school or school-affiliated organization employees. Instead, the Secretary expects that the receptions permitted under the regulations will be general gatherings that are open to all conference or meeting attendees, are held in conjunction with the conference or meeting, and are generally held at the conference site. The Secretary believes this kind of reception provides attendees with an appropriate opportunity for information sharing on the training being conducted.

By ''reasonable cost,'' the Secretary anticipates that conference managers and sponsoring lenders and guaranty agencies will adhere to the ''prudent person test'' under which the cost per person for the sponsored event does not exceed the cost that would be incurred by a prudent person under the circumstances at the time the decision was made to incur the cost. The burden of proof will be on conference managers and sponsors to show that the costs are consistent with the normal per person cost of such events.

The Secretary also notes that she neglected to specify in § 682.401(e)(2)(v) that such meals, refreshments, and receptions sponsored by a guaranty agency must be ''reasonable in cost,'' and has added that condition to the regulations.

Changes: Section 682.401(e)(2)(iv) has been modified to require that guaranty agency-sponsored meals, refreshments, and receptions be ''reasonable in cost.''

Lender and Guaranty Agency Performance of School-Based Functions as a Contractual Third-Party Servicer, With Appropriate Compensation, and to Participating Foreign Schools (§§ 682.200(b) and 682.401(e)(1)(i)(F))

Comment: Many commenters representing lenders, lender servicers, and guaranty agencies objected to the provision in the proposed regulations that would prohibit a lender or guaranty agency from performing functions on behalf of a school except on a short-term, non-recurring, emergency basis. The commenters noted that this provision represents a change from longstanding Department policy that allowed a guaranty agency or lender to perform functions on behalf of a school as long as the services were performed with appropriate compensation. The commenters also note that regulations governing third-party servicers in 34 CFR § 668.2 do not include these same restrictions and permit any individual or organization to enter into a contract with a school to administer any aspect of the school's Title IV programs. The commenters indicated implementing this regulation would force FFEL Program participants to immediately cease performing certain activities that benefit schools and their borrowers. Several commenters from small schools claimed that if they could not contract with their State guaranty agency as a third-party servicer to administer certain aspects of the FFEL Program, they would be forced to procure services from less well-informed, less reliable, and more costly third-party servicers.

Some lender and guaranty agency commenters noted that the limitation on lenders and guaranty agencies providing staffing services to schools will result in the elimination of previously Department-sanctioned and directed eligibility determination services provided to eligible foreign schools at the school's request. The commenters recommended that the Secretary provide an exception in the regulations to allow these services to continue.

A national association stated that the proposed regulations did not explicitly allow lenders and guaranty agencies to perform student loan entrance and exit counseling activities, and expressed concern that the Department would be effectively prohibiting lenders, guaranty agencies, and secondary market lenders from supporting or participating in educational outreach and financial literacy efforts. Another national organization asked that the regulations explicitly permit lenders and guaranty agencies to provide staff training, computer support, and printing and distribution of financial aid-related information, and to perform other school functions with appropriate compensation.

A commenter representing a national consumer organization and national student associations recommended that the Department impose a blanket prohibition on lenders providing assistance to schools to perform school-based financial aid duties, noting that many schools had already agreed to this restriction under voluntary agreements with state attorney generals. Several U.S. Senators strongly urged the Secretary to prohibit all lender or guaranty agency performance of school financial aid-related functions, even on an emergency basis, because these activities promoted particular lenders and created a serious loophole in the regulations.

Discussion: The Secretary understands these regulations represent a change from prior Department policy. As the commenters noted, under the Department's prior policy guidance, lenders and guaranty agencies would not be considered to be providing an improper inducement if they performed or assisted a school with certain Title IV student aid functions, particularly FFEL Program loan functions, as long as they were appropriately compensated for their services or they performed them under contract as a school third-party servicer. Recent investigations have shown, however, that lenders and guaranty agencies generally provided staff or services to schools almost exclusively to maintain or increase loan volume from the schools. In some cases, staff paid by a lender essentially took over a school's responsibility for advising students and parents without disclosing to the students and parents that the staff members worked for the lender, not the school. The Secretary believes that lender and guaranty agency staffing for schools has created a serious conflict of interest for schools in their critical counseling role with students and parents, and has significantly contributed to limiting a borrower's choice of lender at some schools. The limitations imposed by the new regulations include restrictions on lender and guaranty agency conduct of or participation in required in-person, school-based initial and exit counseling with FFEL borrowers. It does not, however, limit a lender's support of or participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, as that is permitted under paragraph (5)(ii)(B) of the definition of *lender* in § 682.200(b). Similarly, the final regulations are being modified to clarify that a guaranty agency can continue its student aid and financial literacy-related outreach activities.

The Secretary agrees that, under the proposed regulations, a guaranty agency or lender would be unable to continue to provide loan eligibility and certification services for participating foreign schools at the school's request. The Secretary has previously directed guaranty agencies to provide these services to ensure that eligible borrowers can successfully secure FFEL loans to attend certain eligible foreign schools. The Secretary did not intend to interfere with this activity and has modified the regulations accordingly.

The Secretary disagrees with the suggestion that we define all forms of lender or guaranty agency staffing to perform school-based student loan functions as an improper inducement. The Secretary believes that these services should be allowed in limited situations as described in the regulations.

Changes: We have modified the definition of *lender* in § 682.200(b) and have modified § 682.401(e) to allow lenders and guaranty agencies to perform, as a Secretary-delegated function, eligibility and loan certification functions if requested by a participating foreign school. We have modified § 682.200 to exclude in-person, school-required initial and exit counseling from those student aid and financial-literacy related outreach activities that a lender can participate in and support. Section 682.401(e)(2) of the regulations has also been modified to clarify that a guaranty agency can continue its student aid and financial literacy-related outreach activities with schools, students, and parents, excluding in-person, school-required initial and exit counseling.

Services to Schools and Students Under Other State or Federal Education Programs or by a State Agency FFEL Lender (§§ 682.200(b) and 682.401(e))

Comment: One commenter from a non-profit agency that serves as a guaranty agency and lender in the FFEL Program, and also participates in and administers other Federal and State education programs, asked the Secretary to clearly state that guaranty agencies and lenders are not prohibited from continuing to meet their obligations under other Federal and State education laws as long as the activities under those programs are not tied to expectations regarding loan applications or loan volume. The commenter stated that many of these other Federal and State programs encourage or direct agencies or lenders to partner with students and schools. Another commenter from an agency that serves as a State lender expressed concern that the proposed regulations would adversely impact the agency's ability to provide the full array of services it is mandated to carry out under State law. The commenter believes that the agency will no longer be able to develop and produce publications that promote higher education in the State and provide financial literacy training or to be actively engaged with the State university in early outreach and awareness programs. The commenter predicts the regulations will have a chilling effect on school participation in State grant and loan programs by prohibiting the inclusion of State grants and loans in eligible students' financial aid packages. The commenter believes the rationale for the new regulations is not applicable to a State agency lender that is controlled by the State and governed by State ethics laws. The commenter asked that the regulations be modified to recognize differences between State programs that are funded and delivered within a branch of State government and other programs.

Discussion: The Secretary agrees with the first commenter. The Secretary is aware that some State agencies and higher education commissions act as guaranty agencies and secondary markets and also administer other Federal and State education programs that are not related to FFEL Program loans. Some of the other programs in which these agencies are involved include State grant, scholarship and loan forgiveness programs and the Federal GEAR–UP and Talent Search Programs. The Secretary strongly supports the work of these agencies in administering these other Federal and State programs and clarifies that such an agency may continue to meets its obligations under other Federal and State education laws provided the agency does not use its role in these programs to secure loan applications or loan volume for a lender or guaranty agency.

In response to the other commenter, the Secretary reiterates that section 435(d)(5) of the HEA governing prohibited inducements by lenders does not make any distinction between various types of FFEL lenders. Therefore we are unable to provide for the distinctions requested by the commenter in these regulations. The regulatory restrictions on improper inducements apply equally to for-profit and State-designated FFEL lenders. The Secretary notes, however, that the provisions in paragraph (5)(ii)(B) of the definition of *lender* in § 682.200(b) provide that a lender's support of and participation in a school's student aid and financial literacy-related outreach activities are permissible, as long as the name of the entity that developed and paid for the materials is provided to the participants and the lender does not promote its student loan or other products.

Changes: None.

Definition of ''Emergency Basis'' for Lender and Guaranty Agency Short-Term, Non-Recurring, Emergency Staffing Services to FFEL Schools (§§ 682.200(b) and 682.401(e)(3))

Comment: In response to the Secretary's specific solicitation of comments on whether an emergency should be limited to State- or Federally-declared national or natural disasters, some commenters agreed with this limitation. One commenter indicated that the emergency should be limited to a declared natural disaster because that was clearly a circumstance outside the school's control. The commenter believes that a school should be prepared to deal with worker absenteeism and seasonal application volume. Many other commenters believe that there may be more localized disasters creating emergencies for a specific school (for instance, a building on campus may burn or hazardous materials may be discovered, resulting in the closure of the financial aid office) than those that are declared by a state or federal official. The commenters also stated that an office or campus might be suddenly limited by illness, death, accidents, sudden employment changes, system conversions or technical failures, and other unforeseen circumstances that would result in a potential breakdown of financial aid services to students and their parents. The commenters recommended that broader, non-recurring unforeseen conditions or events be encompassed by an emergency, either in the regulations or in the preamble.

Discussion: The Secretary thanks the commenters for their suggestions. The Secretary agrees that defining emergency basis to include only a Federally-declared national disaster or a State- or Federally-declared natural disaster may not address more localized disasters or emergencies that may affect a specific school and interrupt the flow of FFEL loan services to students and parents on that campus. The Secretary does not agree, however, that an emergency should include staff absenteeism or employment changes, fluctuations in seasonal loan volume, planned systems conversions, or other similar circumstances. The Secretary expects schools to be ready to handle such circumstances as part of being administratively capable of participating in the Federal student financial aid programs.

Change: Paragraph (b)(5)(iii) of the definition of *lender* in §§ 682.200 and the provisions in § 682.401(e)(3) have been modified to include a definition of emergency basis. For the purpose of a lender or guaranty agency providing short-term, non-recurring emergency staffing services to a school, this term means a State-or Federally-declared natural disaster, a Federally-declared national disaster, and other localized disasters and emergencies identified by the Secretary.

Definition of ''Other Benefits'' for Purposes of Prohibited Points, Premiums, Payments, and Other Inducements to Any School or Other Party (§§ 682.200(b) and 682.401(e)(3)(iii))

Comment: Several commenters objected to the proposal to define ''other benefits'' to include as an improper inducement ''preferential rates for or access to the lender's other financial products.'' The commenters claim that this will deter lenders from providing competitive rates and fees to borrowers on private education loans. The commenters note that under the preferred lender list provisions in § 682.212(h) of the proposed regulations, schools are not prohibited from negotiating with lenders to secure the best borrower benefits on FFEL loans in identifying lenders for the school's preferred lender list. The commenters believe that a school should also be able to negotiate for the most beneficial private education loan benefits for its students from a lender that offers both private education and FFEL loans without the lender risking sanctions by the Department.

Discussion: The Secretary disagrees with the commenters. In many cases, a lender's placement on a school's FFEL preferred lender list or its promotion as the school's recommended FFEL lender was based on an agreement to provide the school access to the lender's private education loan program or to provide more beneficial loan terms on those private education loans. A lender who provides private education loans to a school's students at competitive rates may do so as long as the lender does not offer or provide those benefits in exchange for FFEL loan applications, FFEL application referrals, a specified volume or dollar amount of FFEL loans, or placement on the school's list of recommended or suggested lenders.

Changes: None.

Benefits Based on Participation in a Guaranty Agency's Program (§ 682.401(e)(1)(i)(B), 682.401(e)(1)(ii), and 682.401(e)(1)(iii))

Comment: Some guaranty agency commenters expressed concern about the language in § 682.401(e)(1)(ii), which prohibits a guaranty agency from assessing additional costs or denying benefits to schools and lenders based on the school's or lender's decision not to participate in the agency's loan guaranty program or failure to provide a specified volume of FFEL Program loans to the agency, or a school's failure to place a lender that uses the agency's loan guarantee on the school's preferred lender list. The commenters believe this provision was intended to align with the requirements of § 682.401(e)(1)(i)(B), which prohibit a guaranty agency from making payments to a school based on the school's voluntary or coerced agreement to participate in the agency's program. The commenters believe, however, that the requirements of proposed § 682.401(e)(1)(ii) are overly broad and will prevent a guaranty agency from limiting its services to FFEL Program participants. The commenters stated that the regulations appear to require a guaranty agency to provide benefits, products, and services to all schools and lenders even if they do not participate in the agency's loan guaranty program. The commenters also asked the Secretary to clarify in the preamble to the regulations that § 682.401(e)(1)(iii) does not prohibit the continuation of cooperative arrangements between guaranty agencies, such as the Common Manual, Mapping Your Future, and the Common Review Initiative that create economies of scale or greater efficiencies for schools or lenders with which those guarantors participate.

Discussion: The commenters are correct that the requirements of § 682.401(e)(1)(i)(B) and 682.401(e)(1)(ii) were intended to complement each other. Section 682.401(e)(1)(i)(B) and 682.401(e)(1)(iii), addresses prohibited incentive payments by guaranty agencies to schools and lenders to secure loan volume. Section 682.401(e)(1)(ii) addresses the practice in which guaranty agencies denied schools and lenders benefits or assessed schools and lenders additional costs if they failed, among other things, to participate in the agency's program or provide a specified volume of loan applications or loan volume. The Department has become increasingly aware of these types of activities over the last several years, and the Secretary believes that if these activities were undertaken by a guaranty agency to secure loan volume, the activities would properly be considered a prohibited inducement. In one case, a guaranty agency that had previously provided certain funds to support student aid administration to all schools in its State, including non-FFEL participating schools, announced that it would stop paying those funds to schools that did not agree to participate in the agency's FFEL loan guaranty program. In another instance, a guaranty agency was directed to change its policy and charge costs related to the administration of a State program to those schools that did not participate with the guaranty agency and generate loan volume for that agency after previously not charging costs to any schools. In another case, scholarship funds from the guaranty agency's Operating Fund were to be provided only to schools that participated in the agency's FFEL Program and provided a certain FFEL loan volume to the guaranty agency. Finally, in another situation, a lender was notified by a guaranty agency that certain costs for guaranty agency-provided services to the agency's lenders would be based on the lender's success or failure in delivering a certain volume of loan guarantees to the guaranty agency. The Secretary believes that under certain circumstances, the denial of benefits or the assessment of additional costs based on participation in a guaranty agency's program, or loan volume provided to the agency, could represent a prohibited inducement. The Secretary believes that this provision accurately reflects the scope of possible guaranty agency activities that should be viewed as improper inducements.

The Secretary clarifies that § 682.401(e)(1)(iii) does not require guaranty agencies to discontinue the cited cooperative arrangements they have undertaken with each other, some with the express approval of the Secretary. Other cooperative activities that the guaranty agencies wish to undertake to achieve economies of scale or that they believe will generate cost efficiencies should be discussed with the Department before being undertaken.

Changes: None.

Prohibited Inducements and Lender Claim Payments (§ 682.406)

Comment: Several lender, lender servicer, and guaranty agency commenters indicated that proposed § 682.406(d), which would prohibit a guaranty agency from paying a lender's claim or receiving Federal reinsurance on a loan for which a lender offered or provided an improper inducement, appeared to impose a duty on the guarantor to determine whether such improper activity took place as part of normal claim review and processing prior to claim payment. The commenters agree that if there was proof of this type of violation, the claim should not be honored, but believe the regulation, as proposed, would be unmanageable. The commenters believe that if a guarantor took such action, it would effectively be denying the lender payment of Federal benefits without procedural due process protections that would allow the lender to show that the challenged activity did not occur or was permissible. The commenters recommended that the regulations be revised to provide that the guaranty agency should deny claim payment only when it was notified by the Secretary of the lender's violation of the prohibited inducement provisions and of the population of affected loans.

Discussion: The Secretary agrees that, generally, a guaranty agency will not be expected to deny a claim payment to a lender unless the Secretary has notified the guaranty agency that the lender has provided improper inducements. However, the Secretary expects guaranty agencies to include improper inducements as a subject in their oversight of lenders and to deny claims if the agency determines that the lender has provided improper inducements.

Changes: The regulations in § 682.406(d) have been modified to reflect that a guaranty agency may not deny a claim payment unless the agency determines or is notified by the Secretary that the lender offered or provided an improper inducement.

Eligible Lender Trustees (ELTs) (§§ 682.200 and 682.602)

Comment: Several commenters supported the proposed changes implementing The Third Higher Education Extension Act of 2006 (HEA Extension Act) (Pub. L. 109–292) that: Prohibit new ELT relationships between lenders and schools or school-affiliated organizations; restrict existing ELT relationships; and define the term *school-affiliated organization*.

Discussion: The Secretary appreciates the commenters' support.

Changes: None.

Comment: Several commenters stated that the definition of *school-affiliated organization* in § 682.200, in particular the inclusion of the words ''directly or indirectly related to a school,'' was overly broad and would inappropriately include organizations that are not part of the school's organizational structure and over which the school has no control. The commenters urged the Secretary to revise the definition to exclude organizations such as foundations, membership associations, and financial institutions.

Discussion: We continue to believe that many organizations, such as foundations and alumni and social organizations, are clearly school-affiliated even if the organization is not under a school's ownership or control. The intent of the HEA Extension Act was to eliminate or significantly restrict ELT relationships between a lender and a school or a school-affiliated organization. The proposed definition of *school-affiliated organization* is consistent with this goal.

Changes: None.

Comment: One commenter stated that the effective date of the proposed regulations should be no earlier than July 1, 2008, the effective date of the final regulations, rather than the effective dates in the HEA Extension Act. The commenter indicated that holding schools accountable for their actions retroactive to the effective dates in the HEA Extension Act, when those dates were not yet reflected in the FFEL Program regulations, was unfair.

Discussion: The effective dates in the HEA Extension Act with respect to ELT relationships are statutory and the Secretary does not have the authority to change those dates.

Changes: None.

Comment: Several commenters believed the inclusion of the cross-reference to § 682.601(a)(3) in § 682.602(b)(1) was incorrect and asked the Secretary to remove it.

Discussion: The commenters are correct that the cross-reference to § 682.601(a)(3) in this section was included in error.

Changes: Section 682.602(b)(1) has been revised to remove the cross-reference to ''(a)(3).''

Frequency of Capitalization (§ 682.202)

Comments: All of the commenters agreed with the Secretary's proposal to allow capitalization of unpaid interest that accrues during an in-school deferment only at the expiration of the deferment. Several commenters stated that this regulation would level the playing field between the FFEL and Direct Loan programs. One commenter requested that the Department consider establishing a prospective effective date and a triggering date for deferments granted on or after July 1, 2008. The commenter believed that many servicers and loan holders might have difficulty implementing the systems changes necessary to implement the new capitalization rules in the middle of a deferment.

Discussion: The Secretary appreciates the commenters' support. The Secretary does not believe that a prospective effective date is needed to implement the capitalization rules. The Secretary recognizes that systems changes will be necessary to implement this change in the capitalization rules, but we believe that servicers and loan holders have ample time to make these changes before the effective date of July 1, 2008.

Changes: None.

Loan Discharge for False Certification as a Result of Identity Theft (§§ 682.208, 682.211, 682.300, 682.302 and 682.411)

Comment: Many commenters supported the proposed regulatory changes to allow a lender to suspend credit bureau reporting for 120 days and to grant a 120-day administrative forbearance to a borrower while investigating an alleged identity theft upon receipt of a valid identity theft report (as defined under the Fair Credit Reporting Act (15 U.S.C. 1681a)) from a borrower or notification from a credit bureau. However, many commenters did not believe that the proposed changes provided meaningful relief to the victims of identity theft or lenders because the Department did not propose changes to the requirement that an individual must obtain a local, State or Federal judicial determination that conclusively determines that the individual who is the named borrower of the loan was the victim of the ''crime'' of identity theft. Unless this requirement is met, a FFEL or Direct Loan Program loan cannot be discharged as falsely certified due to the crime of identity theft. The commenters suggested that we change the interpretation of section 437(c) of the HEA and allow a discharge of a loan falsely certified due to the crime of identity theft based on the requirements contained in the Fair and Accurate Credit Transactions Act (FACT Act). Other commenters believed that the Department is properly interpreting section 437(c) of the HEA and that the statutory language authorizing a loan discharge for a false certification arising from the crime of identity theft needs to be changed.

Discussion: During the negotiated rulemaking process, the Department carefully considered whether there was any basis for adopting a different standard on which to grant a discharge based on the crime of identity theft but we determined that current regulations properly reflect section 437(c) of the HEA by protecting both victims of the crime of identity theft and the Federal fiscal interest. Further, we believe that the changes to the regulations in

§§ 682.208 and 682.211 that will allow for the suspension of credit bureau reporting and collection activity provide relief to borrowers while allowing lenders to comply with the Fair Credit Reporting Act without violating the FFEL Program regulations. We wish to emphasize that the individual who is the named borrower on a FFEL or Direct Loan that was falsely certified as a result of the crime of identity theft is not liable for a loan that borrower did not execute or authorize another to execute on the borrower's behalf, whether or not the loan is discharged based on a crime of identity theft. An individual who can demonstrate that his or her signature was forged on a FFEL or Direct Loan note is relieved of the debt under common law and State laws against forgery.

Changes: None.

Comment: One commenter requested that the Department retroactively apply the proposed changes to §§ 682.208 and 682.211 that allow for the suspension of credit bureau reporting and collection activity to July 1, 2006, the effective date of the identity theft discharge authorized by the Higher Education Reconciliation Act of 2005 (Pub. L. 109–171). The commenter stated that lenders may have already ceased credit bureau reporting and due diligence on loans to meet FACT Act requirements prior to the publication of the regulations, and subsequently determined that the loan remains enforceable against the borrower. According to the commenter, a retroactive application of these provisions would provide a safe harbor for such lenders.

Discussion: While we do not believe retroactive implementation of the provisions allowing for the suspension of credit bureau reporting and collection activity is necessary, we will take into consideration any due diligence conflicts created by the different requirements in the HEA and the FACT Act in enforcement actions related to the treatment of borrowers who may have been victims of the crime of identity theft.

Changes: None.

Comment: Several commenters objected to the requirement in the current regulations in § 682.402(e)(3)(v)(C) that a person claiming a discharge must produce a judicial determination that conclusively determines that a FFEL or Direct Loan was falsely certified due to the crime of identity theft committed by a specific individual named in the determination. These commenters viewed this requirement as imposing an unnecessary burden for victims of identity theft. These commenters urged the Department to change the requirement that discharge relief be provided only if a judgment or verdict has been entered because, in their view, that requirement prevents individuals who have been victimized by identity theft from obtaining relief. Other commenters urged the Department to adopt the definition of identity theft in the FACT Act, and conform discharge relief to the procedures and standards adopted in that law.

Another commenter noted the difficulty in pursuing the perpetrator of the crime in instances in which the judicial determination does not identify that individual. The commenter cited a recently-filed claim based on a suit filed by the lender against a putative borrower, who denied executing the loan documents. The court issued a decision in which it found that the putative borrower had not applied for the loan and was not obligated to repay it. However, the court further opined that the putative borrower was the victim of the crime of identity theft, committed by unnamed individuals. The commenter noted that it was unable to comply with regulatory requirements to pursue collection action against the perpetrator if the judicial determination on which the claim rests does not identify the perpetrator. Some commenters suggested that we change the regulations to permit discharge relief in instances in which the court does not find that an identified individual was the perpetrator of the identity theft.

Discussion: FFEL Program regulations in §§ 682.206(d), 682.300(b)(2)(vii), 682.402(a)(4), and 682.406(a)(1) and (a)(10) provide that—with very limited exceptions—FFEL Program benefits are payable only if the holder has a legally-enforceable promissory note to evidence the loan. Because a forged promissory note is ordinarily not an enforceable obligation of the putative borrower, a party holding a forged note cannot claim FFEL Program benefits on that loan. The view that the discharge relief option should be extended to lenders for legally unenforceable loans ignores the basic requirement that the lender must hold a legally-enforceable loan. The supposition that victims of identity theft face continued enforcement by lenders assumes that lenders ignore credible proof that individuals did not obtain the debts in dispute. The Department does not consider that supposition to be well-founded, and the commenter's view that lowering the standards for discharge relief is needed to relieve victims of the burden of loans they did not receive is groundless.

As explained in the preamble to the interim final regulations issued by the Department on August 9, 2006, 71 FR 45666, 45676–45677, long before either the FACT Act or the identity theft discharge amendment to the HEA, common law that applied to all loan transactions made clear that individuals who neither executed loan agreements nor accepted the benefits of the loan were not liable for the loan. Putative borrowers therefore faced continued enforcement action only if the holders of the loans either disbelieved the individuals, or disregarded well-established law. Statutory relief was not needed to protect from liability those individuals who made persuasive claims that they neither signed the note nor accepted the loan benefits. Statutory relief was not appropriate for individuals who did not persuasively demonstrate that they had neither signed the loan agreement nor accepted benefits of the loan. The regulation rests on these premises.

The FACT Act addresses different concerns than does the discharge provision in these regulations. Specifically, the FACT Act seeks to provide protections for borrowers after the crime of identity theft has already been perpetrated. More specifically, although a victim of identity theft is not liable for the loan, an impersonator could attempt to obtain more credit from other lenders in the name of the victimized individual. Individuals whose identification credentials have been used by an impersonator face substantial difficulty in preventing the impersonator from continuing to obtain credit in the name of the individual. The FACT Act does not direct creditors to cease attempts to collect loans that the lenders determined to be unenforceable under generally applicable common law, as suggested by the commenter. Rather, the FACT Act allows the complaining individual to alert potential lenders—through the credit bureaus—to the identity theft, and requires lenders to investigate disputes raised by the consumer either directly with the creditor or through the credit bureau, to report the results of that investigation to the bureau in a timely manner, and to correct, if necessary, information the lender had previously furnished to the bureau. There is no reason for the Department to adopt in our discharge regulations FACT Act procedures that are designed not to determine whether the crime of identity theft occurred, but to prevent future thefts and restore a credit history damaged by recognized past thefts.

Section 682.402(e)(3)(v)(C) of the FFEL Program regulations requires the applicant for relief to base the claim on a judicial decision that ''conclusively determines'' that the crime of identity theft caused the loan to be made. As stated in the preamble to the interim final regulations published on August 9, 2006, determining that a crime has been committed necessarily requires discerning the identity of the perpetrator and determining the state of mind of that person in the conduct at issue. (71 FR at 45685) Therefore, approval of an identity theft discharge claim must necessarily rest on a judicial determination that a named individual committed the crime of identity theft. (71 FR at 45676)

The comment is well taken that a judicial ruling specifying that a crime has been committed by an unnamed perpetrator makes this objective impossible. In the case cited by the commenter, a court concluded that the putative borrower did not in fact sign, and did not authorize any other person to sign, the promissory note. The court logically concluded that the putative borrower was not liable for the loan. However, the court then opined that this unauthorized signature constituted a crime of identity theft by an unidentified individual. This ruling cannot support a discharge claim because the ruling in fact did not conclusively determine that a crime occurred. To determine that a crime has been committed, a court must conclude that the elements of a crime have been proven—either beyond a reasonable doubt, in a criminal proceeding, or by a preponderance of the evidence, in a civil suit.[1] A ruling that an unidentified individual not only lacked authority to sign the note, but also did so with the state of mind required to commit a crime, is nothing more than speculation. The regulations require that the judicial ruling on which the claim rests be one that conclusively determines that a crime was committed in order to ensure that relief is provided to the lender only where the ruling identifies the perpetrator so that this individual can be held accountable and required to repay. A ruling that an unnamed individual perpetrated the crime gives the guarantor or the Department no basis on which to pursue the individual responsible for the identity theft.

Changes: The Department has modified § 682.402(e)(3)(iv)(C) to clarify that, for purposes of the discharge, a local, State or Federal judicial determination is one that conclusively determines that a FFEL or Direct Loan was falsely certified due to the crime of identity theft only if the decision identifies the perpetrator of the crime.

Comment: One commenter suggested that we change the regulations to require a lender to cease collection activity and refund interest and special allowance payments received on a loan determined to be unenforceable after the investigation of an alleged identity theft even in cases where the individual named as the borrower did not submit a valid identity theft report as defined under the Fair Credit Reporting Act (15 U.S.C. 1681a).

Discussion: If a lender determines that a loan is unenforceable after the investigation of an alleged identity theft, even in cases where the individual named as the borrower did not submit a valid identity theft report, a lender is already required to refund interest and special allowance payments received on a loan under § 682.406(a)(1).

Changes: None.

Comment: One commenter recommended that we modify the regulations to provide that, if a lender's investigation of the borrower's claim of a false certification of a loan due to the crime of identity theft yields evidence that the loan is enforceable and the borrower later defaults, the lender must provide the evidence upon which the lender relied to determine that the loan was the legal obligation of the named borrower.

Discussion: The Department believes that, in cases where a lender's investigation of an alleged identity theft yields evidence that a loan is enforceable against the named borrower who subsequently defaults, a lender is already required to provide the evidence used to make that enforceability determination under § 682.406(a)(3). This provision requires that a lender provide an accurate collection history and an accurate payment history to the guaranty agency with the default claim filed on the loan showing that the lender exercised due diligence in collecting the loan.

Changes: None.

Preferred Lender Lists (§§ 682.212 and 682.401)

General

Comment: Several commenters supported the Secretary's efforts to ensure the integrity of the student loan programs and the transparency in the loan process so that borrowers are assured of their choice of lender. Several U.S. Senators commended the Secretary for including clear and detailed provisions on prohibited inducements and preferred lender lists in the regulations. On the other hand, several commenters representing schools, lenders, guaranty agencies, student loan servicers, and associations urged the Secretary to withhold publication of final regulations governing preferred lender lists and prohibited inducements in light of the possibility that Congress may pass legislation in these areas. These commenters believe that, if the legislation is enacted, the final regulations might be out of date before they can become effective and, as a result, program participants may be confused.

Discussion: The Secretary takes the oversight of the Title IV student loan programs very seriously and continues to believe, as she did when she began the negotiated rulemaking process in 2006, that these are urgent issues that require aggressive action to expedite reform in advance of any Congressional action. Recent investigations and reports show that problems with preferred lender lists are serious and continuing and need to be addressed. These regulations will help end unethical or questionable practices in the student loan programs and help maintain trust and integrity in the process.

The Secretary understands that for schools that opt to continue to use preferred lender lists there will be some additional administrative burden associated with providing additional disclosures on the method and criteria used by the school to select its preferred lenders, compiling and disclosing comparative information on the lenders' borrower benefits, and updating the preferred lender list. She believes that the benefits to prospective borrowers in regulating the use of preferred lender lists to ensure that borrowers are aware they have a choice of lender and can exercise that choice, and that they are provided with adequate consumer information to make informed decisions on a choice of FFEL lender, outweigh the burden on schools associated with regulating this process.

The Secretary is committed to working closely with participants in the student financial aid programs to implement the regulations and provide any clarifying guidance that may be necessitated by future legislation in these areas.

Changes: None.

Preferred Lender Lists (§ 682.212)

Use of Preferred Lender Lists

Comment: One commenter representing a school stated that the use of preferred lender lists represented the wave of the future, but stated that lenders should be required to

[1] The Department recognized that the elements of the crime of identity theft might be proven in a civil proceeding, such as a divorce proceeding, but to a lesser standard of proof than required for a criminal conviction.

standardize the presentation of details of their loans to permit comparison of loans by borrowers and families. Another school commenter suggested that all schools should be required to have a lender list, including schools participating in the Direct Loan Program. One commenter representing a lender recommended that the use of preferred lender lists be banned because such lists are the foundation of the conflicts of interest in the student loan programs and undermine program integrity. This commenter stated that school influence over a student's choice of lender limits borrower choice and competition for more beneficial loan terms while creating a flow of easy loan volume for a lender. This commenter believes that as long as preferred lender lists exist, lenders will exploit every regulatory regime that the Department devises for placement on a school's list. Another commenter representing a lender stated that the Department should not formally authorize preferred lender lists in regulations when they are not authorized in statute and conflict with the statutory provision supporting a borrower's choice of lender.

Discussion: The Secretary continues to believe that a school's use of a preferred lender list that is based on the school's unbiased research to identify the lenders providing the best combination of services and benefits to borrowers at that school may help students and their parents in navigating the increasingly complex FFEL Program. There is no statutory prohibition against the use of such lists, as long as the school does not use the list to limit the borrower's choice of lender.

Many schools began using preferred lender lists because of their concern about student loan defaults and the negative consequences for the borrowers and the school. Many schools continue to use preferred lender lists to identify lenders that provide high-quality customer service and loan servicing to prevent delinquency and default. We also believe that students and parents increasingly rely upon financial aid offices for information and assistance in dealing with the number of FFEL lenders and the proliferation of marketing of student loan borrower benefits. Preferred lender lists and other consumer information on the student loan process can play a useful role in assisting financial aid officers in dealing with the large volume of requests for information and assistance, and in informing borrower choice. As long as preferred lender lists are properly researched and constructed in compliance with the regulations, we believe such lists can serve as a source of unbiased information that facilitates rather than limits informed borrower choice.

The Secretary does not agree that schools participating in the Direct Loan Program should be required to use preferred lender lists. A school participating in the Direct Loan Program is authorized under the HEA to participate exclusively in that program and is therefore not subject to the requirements of section 432(m) of the HEA that require a FFEL borrower be provided with his or her choice of FFEL lender.

Changes: None.

Number of Preferred Lenders (§ 682.212(h)(1))

Comment: Several commenters representing schools and associations objected to the proposed requirement that a preferred lender list include at least three lenders. Some of these commenters found the required minimum number of three arbitrary and capricious. These commenters argued that this requirement may prevent some schools with low FFEL volume, or tribally-controlled or historically black institutions and other schools with little choice in lenders for their students, from using a preferred lender list. One of these commenters stated that it would be better to simply establish preferred lender criteria and ensure that all lenders selected, regardless of number, met the established criteria. Another commenter recommended an exemption for a school if fewer than 150 borrowers entered repayment based on the school's most recent cohort default rate data. A few commenters argued that a school should be given a chance to justify its use of a list of one or two preferred or recommended FFEL lender(s). One large university requested an exemption from the three-lender requirement based on the use of an open-bid or similar process if the school demonstrates that the arrangement provides the best benefits for the school's students. This school argued that strict adherence to the three lender requirement should not result in the school being forced to include lenders on its list that offer mediocre benefits.

Commenters representing lenders stated that a minimum of three lenders was too few. One of these commenters stated that, with more than 3,000 lenders in the FFEL Program, three lenders did not offer adequate choices to borrowers and suggested that the Department should require 10 to 12 lenders. The commenter also suggested that all lenders meeting the school's established criteria, which must be developed and disclosed, should be included on the list. Another commenter recommended that any institution wishing to provide student loan information to its students should be required to provide an annual listing of all lenders willing to make loans to the school's students along with their loan terms. Another commenter requested that the regulations specify that the requirement for a minimum number of required lenders be applied to each preferred lender list maintained by a school because many schools maintain more than one preferred lender list (i.e., separate undergraduate, graduate/professional, medical school, law school, private loan listings).

Discussion: A school is not required to develop or use a list of preferred or recommended lenders. The regulations establish minimum standards to preserve borrower choice for those schools that choose to develop and use such a list. The Secretary continues to believe that three, unaffiliated lenders is the appropriate minimum number of lenders necessary to preserve borrower choice. We also encourage schools to consider including all lenders that meet the school's selection criteria on a preferred lender list. A school that chooses not to recommend lenders, or that has not been able to identify more than one lender to make loans to its students or parents, is not prohibited from providing, upon the student's or parent's request, the name of lenders that have made loans to the school's students and parents in the past as long as a lender has not provided prohibited inducements to the school to secure those loans. In providing this information, the school must make it clear that it is not endorsing that lender and that the borrower can choose to use any FFEL lender that will make loans to the borrower for attendance at that school.

Finally, the Secretary believes that it is sufficiently clear in the regulations that the requirements for use of a preferred lender list apply to any such list a school develops and maintains if the school uses multiple preferred lender lists of FFEL lenders.

Changes: None.

Updating Preferred Lender Lists

Comment: A couple of commenters noted that the proposed regulations did not include a requirement that a school update its preferred lender list and the required disclosure information with any particular frequency. One of the commenters recommended that the regulations specify that a school must update its list at least annually.

Discussion: The Secretary agrees with the commenters that the list and its accompanying disclosures are only useful to borrowers if the information is current and that the regulations should require updates on a regular basis.

Changes: The regulations in § 682.212(h)(2) have been modified to require that a school must update its preferred lender list and the accompanying information at least annually.

Lenders Selected by Schools (§ 682.212(h)(1))

Borrower Benefits Offered

Comment: One commenter representing a lender noted that the proposed regulations would not require that the lenders selected by the school for its preferred lender list offer the best loan terms for the borrower and recommended that this requirement be explicit in the regulations. Another commenter representing a school noted that the regulations allow a school to negotiate with a lender for the best benefits for the school's borrowers, but expressed concern that the negotiated benefits will be unfair and inequitable from a national perspective because the best benefits will go to borrowers at large schools with large enrollments.

Discussion: Although the Secretary anticipates that financial benefits offered by a lender to the school's student and parent borrowers will be a key factor in a school's evaluation of lenders for its preferred lender list, she does not believe it should be the only factor that the school can consider. It is appropriate for a school to consider the quality of a lender's customer service in loan origination and loan servicing, its effectiveness in providing consumer information, counseling and debt management services, and its delinquency and default prevention efforts. Schools may face sanctions if their cohort default rates exceed certain levels, so a lender's effectiveness in working with borrowers to ensure that loans are repaid may be a legitimate consideration for some schools. The Secretary does not intend to dictate the method or criteria a school may use in selecting lenders for its list beyond the regulatory limits. She believes that the requirement that the school disclose the method and criteria used for lender selection will allow students and their families to evaluate the school's basis for recommending a lender and to make an informed decision as to the advisability of using one of the school's preferred lenders or choosing another FFEL lender.

The Secretary understands the commenter's concern about inequitable benefits in the FFEL Program. However, except with respect to loan origination fees, the HEA does not specify the manner in which lenders may offer lower costs and benefits to students provided the lenders do not discriminate on a legally prohibited basis. Additionally, the manner in which some State-designated and affiliated lenders provide borrower benefits is limited under State law.

Changes: None.

Affiliated Lenders (§ 682.212(h)(1)(ii) and (h)(3))

Comment: A commenter representing a lender stated that requiring lenders to simply certify to a school that they are not affiliated with other lenders on the school's list is meaningless unless there is a penalty for an incorrect certification. The commenter recommended that the regulations provide for a monetary penalty for a lender's misrepresentation of its affiliations. The same commenter stated that lenders, in addition to certifying their affiliations, should be required to disclose to borrowers whether they sell their loans. The commenter believes that this additional disclosure would more fully inform the borrower's choice of lender.

Several commenters representing lenders, guaranty agencies, and loan servicers indicated that the definition of ''affiliated lender'' should not include a reference to eligible lender trustees. The commenters argued that a lender's actions as an originating lender are unrelated to its actions as a lender trustee. They noted that the lender's own lending program and the lending program operated under the trust agreement are separately administered and controlled and generally involve different loan delivery services, pricing discounts, and borrower benefits. The commenters believe that the Department's goals of encouraging consumer choice and competition will be undercut if an originating lender is considered an affiliate of another originating lender or party on the basis of the third-party trust arrangement.

Many commenters representing schools, school-based associations, lenders, guaranty agencies, and loan servicers recommended that ''affiliated lenders'' for the purpose of preferred lender lists be defined as lenders that are under common ownership and control. Some of these commenters noted that this approach would be consistent with legislation pending in Congress. Many of these commenters also expressed concern about the scope of the Department's definition of an affiliated lender. The commenters wanted assurance that the Department would not define the term ''affiliate'' to include parties engaged in post-disbursement forward purchase agreements, loan portfolio sales, post-disbursement loan servicing, and secondary market activity. A consumer advocate argued that the definition should not include relationships that involve only post-disbursement servicing or secondary market activity because this would create a burden on schools because they could not be expected to know about or monitor arrangements like forward purchase agreements.

Discussion: The Secretary disagrees that it is necessary or appropriate to include specific monetary penalties in the regulations related to a lender's certification of its affiliates to schools. This section of the regulations governs school, not lender, activities, in the development of a school's preferred lender list. Further, the Secretary has sufficient existing statutory and regulatory authority to sanction a lender for any misrepresentations to the school.

The Secretary agrees with the commenters that a lender's function and responsibilities as a trustee in a third-party trustee relationship are separate and distinct from its function as an originating lender. We believe, therefore, that ensuring a borrower's choice among lenders will be protected if ''affiliation'' for purposes of a preferred lender list is limited to affiliates that are under common ownership and control. The Secretary also wishes to clarify that the Department does not interpret the lender affiliation provision to include entities that are involved in post-disbursement activities, which a school has no ability to monitor or control.

Changes: The regulations have been modified to delete § 682.212(h)(3)(iv) and the reference to lenders serving as trustees.

School Solicitations and Lender Status (§ 682.212(h)(1)(iii))

Comment: Some commenters representing lenders requested that the Secretary clarify in the regulations that a school's solicitation of an improper benefit from a lender that is not acted upon by the lender would not disqualify the lender for inclusion on the school's preferred lender list.

The commenters also requested that the regulations directly reference the prohibited inducements listed in § 682.200 to prevent a lender from being publicly accused of an impropriety when it is no more than an unsubstantiated accusation or perception.

Discussion: This provision of the regulations governs schools' actions in developing and using a preferred lender list. The focus is on a school's improper solicitation of certain benefits and a school's acceptance of a lender's improper offer and the relationship of those school actions to the school's preferred lender list. As a result, the Secretary does not believe it is necessary to include any specific reference to the prohibited inducement provisions that govern lender and guaranty agency activities in this section of the regulations. The Secretary reiterates that a lender that does not act upon a school's solicitation is not disqualified from being included on a school's preferred lender list and agrees that this should be more clearly stated in the regulations.

Changes: Section 682.212(h)(1)(iii) has been modified to clarify that a preferred lender list developed for use by a school must ''not include lenders that have offered, or have offered in response to a solicitation by the school'' financial and other benefits to the school in exchange for inclusion on the school's preferred lender list.

Financial and Other Benefits Offered for Preferred Lender Status (§ 682.212(h)(1)(iii))

Comment: One commenter representing a lender asked that we clarify the provision that prohibits a lender from being included on a school's preferred lender list if the lender has offered ''financial or other benefits'' to the school in exchange for placement on the school's preferred lender list or loan volume for the lender. The commenter suggested that we modify this provision to exempt those benefits to a school that would be permitted under paragraph (5)(ii) of the definition of *lender* in § 682.200(b) of the regulations. Another commenter representing a school-based association argued that the phrase ''other benefits'' was vague.

Discussion: The Secretary agrees that under paragraph (5)(ii) of the definition of *lender* in § 682.200(b) of the regulations, lenders will be permitted to engage in certain activities that will provide benefits to a school and its students without violating the prohibition on improper inducements. The Secretary believes, however, that those activities and benefits, though permissible, should never be a factor in a school's decision to place a lender on the school's preferred lender list. We believe that inserting the exemption clause recommended by the commenter into this provision would improperly suggest that these activities, rather than the best borrower benefits, can be a factor in the school's selection of its preferred lenders. We do not agree that the term ''other benefits'' is vague. The definition of this term in the regulations provides sufficient detail about the types of benefits that are covered by this regulation.

Changes: None.

List Requirements (§ 682.212(h)(2))

Method and Criteria (§ 682.212(h)(2)(i))

Comment: Many commenters agreed with the Secretary's proposal that schools electing to use a preferred lender list be required to disclose the method and criteria used to select the lenders on the list. The commenters believe that this information will result in a transparent process that prospective borrowers can trust and provide them with the necessary information to make an informed decision about which lender to use.

Discussion: The Secretary thanks the commenters for their support of the requirement that schools participating in the FFEL Program disclose the method and criteria for developing their preferred lender lists.

Changes: None.

Required Comparative Information (§ 682.212(h)(2)(ii))

Comment: Several commenters objected to the requirement that a school provide comparative information about the loans offered by lenders on the preferred lender list on the grounds that it would be too administratively burdensome, particularly if it included information on private education loans. Some commenters expressed concern that the requirements would be so burdensome and fraught with controversy that schools would stop providing such lists, which they believe are useful for borrowers. An association representing financial aid administrators expressed appreciation for the Department's plan to develop a model format to help schools collect information from lenders to help develop the school's lender list. They suggested that lenders be required to disclose the percentage of borrowers who actually receive lender-provided borrower benefits. One school commenter stated that the Secretary should develop and endorse tools to help institutions compare and evaluate education loan programs. Another school commenter recommended that the Secretary establish a clearinghouse of information on all lenders and their loan offerings. One commenter recommended that the school only be required to maintain lender contact information to enable borrowers to contact lenders directly for information. Another commenter stated that the regulations lacked specifics about what information must be provided, how it was to be made available, and whether it was to be provided to all applicants for admission, whether accepted or not, and recommended that the requirement be deleted or limited to a specific number of national or competitive lenders.

Discussion: The Secretary thanks those commenters who expressed support for the Secretary's plans to develop a suggested model format for schools to use to collect and distribute required comparative lender benefit information. She believes that the requirement that schools choosing to develop and maintain preferred lender lists provide comparative lender information coupled with the requirement that a school disclose its method and criteria for lender selection is the only way to restore trust and integrity to the process and to retain the use of preferred lender lists in the FFEL Program. If adopted by all schools using preferred lender lists, the model format will provide a standardized format for collecting and presenting lender information. The form will be subject to public comment under the Paperwork Reduction Act of 1995, and the Secretary will invite comments on the proposed contents, format, and use of the form as part of that public comment period.

Because schools are able to negotiate with lenders for the best loan terms for their students, and FFEL lenders are free to offer different benefits by school, and even by program of study, the Secretary believes it would be infeasible for the Department to develop the kind of clearinghouse one commenter suggested.

Changes: None.

Same Borrower Benefits for All Borrowers at the School (§ 682.212(h)(2)(iii))

Comment: Many commenters representing schools, school associations, lenders and State secondary markets, and guaranty agencies strongly recommended that the Secretary reconsider the proposed requirement that a school ensure than any lender included on its preferred lender list offer the same benefits to all borrowers at the school. Many of the commenters stated that benefit programs are often tailored to different groups of students in particular programs of study with different debt levels and believe that the flexibility to offer differing program benefits to assist borrowers in managing debt levels should be preserved. Some of these commenters believe that this requirement conflicts with a lender's statutory authority to offer reduced interest rates and fees. They also believe that this provision goes beyond the statutory scope of the non-discrimination provisions in sections 421(a)(2) and 438(c) of the HEA. Several commenters representing guaranty agencies and State-designated and State-affiliated lenders, some using tax exempt financing, noted that they were restricted by law to providing benefits only to residents of the States they serve. These commenters believe that the implementation of a blanket requirement would result in increased costs to borrowers. The commenters requested that the Secretary consider, at a minimum, exempting non-profit, State-affiliated lenders from this requirement.

Discussion: The Secretary disagrees that the proposed requirement exceeds her statutory authority. She appreciates, however, that the unintended consequence of such a requirement could be a loss of borrower benefits for some borrowers. She agrees that this result would be inconsistent with allowing a school using a preferred lender list to negotiate with lenders to ensure the best borrower benefits for its students. The Secretary expects that a lender making loans at a school for which it provides different benefits by program, debt level, State restriction, etc., will provide this information to the school for the school's use in providing comparative information to borrowers.

Changes: The regulations have been modified to remove paragraph (iii) from § 682.212(h)(2).

School Loan Certification and Unnecessary Delays (§§ 682.212(h)(2)(vi) and 682.603(f))

Comment: Commenters strongly supported the requirement that a borrower's choice of lender not be effectively denied by a school's delay in completing the borrower's loan eligibility certification. One commenter representing a lender requested that the Secretary clarify the meaning of unnecessary delay by specifying that a refusal to process, or an intentional delay in processing, a certification because a lender does not participate in the electronic processing system that the school uses is impermissible. A school commenter asked that the regulations provide schools some flexibility without viewing it as a delay. The commenter asked the Secretary to recognize that a school's certification processing times may differ if the borrower chooses a lender that does not participate in the school's electronic processes without the school being considered to have purposely impeded a borrower's choice of lender.

Discussion: First, we believe it is necessary to clarify that the requirements of revised § 682.603(f) apply to all FFEL participating schools even if the school does not use a preferred lender list. The HEA provides for a borrower's choice of FFEL lender. A school cannot abridge that choice through its administrative processes or its designation of preferred lenders and guaranty agencies.

Second, a school may not decline to provide a loan certification, or significantly delay a loan certification, because the lender does not use the electronic process or platform the school uses. The Secretary understands however, that, under those circumstances, a school may have to complete a manual certification that may require more processing time than would an electronic certification. However, the borrower's request must be honored by the school as expeditiously as possible without imposing unnecessary administrative hurdles on the borrower or the lender. Schools are reminded that their administrative practices in loan certification are subject to review and audit. The Secretary encourages schools and lenders to work together on behalf of borrowers to expand their electronic capabilities and platforms to maximize borrower choice and minimize loan certification processing times. If a school is aware that the lender the borrower has selected has elected not to make loans to the school's students in the past, the school is free to advise the borrower of that fact and encourage the borrower to confirm with the lender whether it will make a loan to the borrower so that the borrower will not be delayed in securing loan funds.

Changes: None.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this final regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. In accordance with the Executive order, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs. (Absent the provisions required to implement the CCRAA, these regulations would not be considered ''economically significant.'')

Need for Federal Regulatory Action

These regulations address a broad range of issues affecting students, borrowers, schools, lenders, guaranty agencies, secondary markets and third-party servicers participating in the FFEL, Direct Loan, and Perkins Loan programs. Prior to the start of negotiated rulemaking, through a notice in the **Federal Register** and four regional hearings, the Department solicited testimony and written comments from interested parties to identify those areas of the Title IV regulations that they felt needed to be revised. Areas identified during this process that are addressed by these final regulations include:

• Duplication of effort for loan holders and borrowers in the deferment granting process. The final regulations allow Title IV loan holders to grant a deferment under a simplified process.

• Difficulty experienced by members of the armed forces when applying for a Title IV loan deferment. The final regulations allow a borrower's representative to apply for an armed forces or military service deferment on behalf of the borrower.

• Confusion regarding the eligibility requirements that a Title IV loan borrower must meet to qualify for a total and permanent disability loan discharge. The final regulations clarify these requirements.

• Lack of entrance and exit counseling for graduate and professional PLUS Loan borrowers. The final regulations require entrance counseling and modified exit counseling.

• Costs associated with capitalization on Federal Consolidation Loans for borrowers who consolidated while in an in-school status. The final regulations limit the frequency of capitalization on such loans.

Based on its experience in administering the HEA, Title IV loan programs, staff with the Department also identified several issues for discussion and negotiation, including:

• Risk to the Federal fiscal interest associated with the total and permanent disability discharge on a Title IV loan. The final regulations require a prospective three-year conditional discharge so that the applicant's condition can be monitored before the borrower receives a Federal benefit.

• Enforcement issues and risk to the Federal fiscal interest associated with electronically-signed MPNs that have been assigned to the Department. The final regulations require loan holders to maintain a certification regarding the creation and maintenance of any electronically-signed promissory notes and require loan holders to provide disbursement records should the Secretary need the records to enforce an assigned Title IV loan.

• Excessive collection costs charged to defaulted Perkins Loan borrowers. The final regulations cap collection costs in the Perkins Loan Program.

• Unreasonable risk of loss to the United States associated with the more than $400 million in uncollected Perkins Loans that have been in default for a significant number of years. The final regulations provide for mandatory assignment of older, defaulted Perkins loans at the request of the Secretary.

• Program integrity issues associated with prohibited incentive payments and other inducements by lenders and guaranty agencies. The final regulations explicitly identify prohibited inducements and allowable activities.

• Abuse associated with the use of lists of preferred or recommended lenders. The final regulations ensure such lists are a source of useful, unbiased consumer information that can assist students and their parents in choosing a FFEL lender.

Lastly, regulations were required to implement The HEA Extension Act and the CCRAA.

Regulatory Alternatives Considered

A broad range of alternatives to the regulations was considered as part of the negotiated rulemaking process. These alternatives were reviewed in detail in the preamble to the NPRM under the *Reasons* sections accompanying the discussion of each proposed regulatory provision. To the extent they were addressed in response to comments received on the NPRM, alternatives are also considered elsewhere in the preamble to these final regulations under the *Discussion* sections related to each provision. No alternatives were considered for the provisions related to the implementation of the CCRAA, as these were limited to areas where the statute set out explicit parameters that are not subject to regulatory discretion.

Benefits

As discussed in more detail in the preamble to the NPRM, many of the regulations not related to the CCRAA codify existing sub-regulatory guidance or make relatively minor changes intended to establish consistent definitions or streamline program operations across the three Federal student loan programs. The Department believes the additional clarity and enhanced efficiency resulting from these changes represent benefits with little or no countervailing costs or additional burden.

Benefits provided in these non-CCRAA regulations include: the clarification of rules on preferred lender lists and prohibited inducements; simplification of the process for granting deferments; changes to the process of granting loan discharges that reduce burden for loan holders, and protection of borrowers from unnecessary collection activities. Other changes include simplification of the deferment application process; limits on the frequency with which FFEL lenders can capitalize interest on Consolidation Loans; limits on the amount of collection costs charged to defaulted Perkins Loan borrowers; and the mandatory assignment to the Department of longstanding defaulted Perkins Loans with limited recent collection activity.

Of the proposed provisions not related to the CCRAA, only the mandatory assignment of defaulted Perkins Loans has a substantial economic impact, although the single-year impact is less than the $100 million threshold. Two commenters questioned the assertion that the economic impact of this provision is below the threshold, noting ''the Department believes that there are $400 million in Perkins Loans that have been in default more than five years. Although the proposed regulation would impose mandatory assignment on loans in default more than seven years, not five, it seems clear that the $100 million threshold will be breached.'' The $400 million figure cited by the commenters was included in the NPRM to give a sense of the scale of the overall portfolio of defaulted Perkins Loans. As noted elsewhere in the NPRM, the Department estimated the amount of outstanding loans currently subject to the proposed provision, those in default for at least seven years and for which the outstanding balance has not decreased in at least 12 months, at $23 million, substantially below the $100 million threshold. 72 FR 32429. Department estimates for subsequent years indicate this amount would grow by approximately $1 million annually under current regulations, again well below the threshold.

Many of the regulatory provisions related to the implementation of the CCRAA result in significantly lower Federal costs through a reduction in net payments to lenders and guaranty agencies participating in the FFEL Program. The Department estimates that these provisions will reduce Federal costs by $23.3 billion over fiscal years 2007–2012. Student lenders compete vigorously for loan volume by offering borrowers reduced interest rates and fees while at the same time earning rates of return significantly above the consumer lending industry average. The CCRAA-related changes in these regulations may lead some lenders to reconfigure their marketing, servicing, and profit expectations to accommodate lower Federal subsidies. The Department's preliminary analysis indicates both large and small lenders will still be able to structure their operations to generate a reasonable rate of return.

The CCRAA reduced special allowance payments for loans first disbursed on or after October 1, 2007 and established different rates for eligible not-for-profit lenders and other lenders. The Department estimates these changes will reduce Federal costs by $14.7 billion over 2007–2012. Over this period, the Department estimates lenders will originate 83.7 million loans for a total of $625.6 billion. In general, the Department does not collect data on the for-profit status of participating lenders. Under current law, not-for-profit lenders qualify for a special allowance differential for loans financed through tax-exempt securities. The Department assumes the 39 lenders qualifying for tax-exempt special allowance reflect the universe of not-for-profit lenders in the FFEL program. The total outstanding portfolio for these lenders at the end of 2006 was $40 billion, or 12.41 percent of the total outstanding portfolio of $325 billion. This rate has been relatively constant over time and across loan types; it is assumed to remain stable throughout the forecasted period. Recent analysis by Fitch Ratings, *An Education in Student Lending,* reports the student loan yield for three large lenders, representing 50 percent of the market in 2006, as between 7.16 percent and 7.99 percent, with a net student loan spread between 1.64 percent and 1.84 percent. This is significantly above the comparable spread for consumer loans. The reduced special allowance payments under the CCRAA will reduce these yields but are not anticipated to have a significant adverse effect on large or small lenders.

The CCRAA reduced the rate guaranty agencies may retain on most default collections from 23 percent to 16 percent on collections after October 1, 2007. The Department estimates this change will reduce Federal costs by $2.2 billion over 2007–2012, half of which is at the time of enactment as adjustments to loans currently outstanding. Guaranty agencies use different tools to collect defaulted loans; each approach has its own retention rate. The three main rates are: The new 16 percent rate reflected in this regulation for regular default collections; 10 percent on specialized collections, such as the pay-off of defaulted balances through the origination of a new consolidation loan; and 0 percent on loans collected through the offset of tax returns by the Internal Revenue Service and similar activities. The collection categories affected by the CCRAA represent less than a quarter of default collections by guaranty agencies. For 2008, the Department projects it will retain 94.82 percent of all default collections made by guaranty agencies, an increase from 92.17 percent in 2007.

The CCRAA decreases account maintenance fees paid to guaranty agencies from 0.10 percent to 0.06 percent of original principal balance outstanding on which guarantees were issued, effective October 1, 2007. The Department estimates that this change will reduce Federal costs by $2.6 billion over 2007–2012, $1 billion of which is at the time of enactment as adjustments to loans currently outstanding.

The CCRAA eliminated, effective October 1, 2007, the ''exceptional performer'' designation under which lenders and loan servicers qualified for higher than standard insurance against loan default. The Department estimates this change, which applies to any invoice the Department receives after October 1, 2007, will reduce Federal costs by $1.2 billion over 2007–2012. In 2007, 90 percent of loans were serviced by a servicer receiving the higher insurance rate. As with the other changes reducing payments to lenders, the Department expects some lenders may reconfigure their marketing, servicing, and profit expectations to accommodate lower Federal subsidies.

The CCRAA increased the loan fee a lender must pay to the Secretary from 0.50 to 1.0 percent of the principal amount of the loan for loans first disbursed on or after October 1, 2007. The Department estimates this change will reduce Federal costs by $2.6 billion over 2007–2012. The fee is payable on all new loan originations except PLUS loans originated through the auction mechanism created by the CCRAA. Student lenders compete vigorously for loan volume by offering borrowers reduced interest rates and fees while at the same time earning rates of return significantly above the consumer lending industry average. The increased fee, whether alone or in tandem with other changes in the CCRAA, may lead some lenders to reconfigure their marketing, servicing, and profit expectations to accommodate lower Federal subsidies. The Department's preliminary analysis indicates both large and small lenders will still be able to structure their operations to generate a reasonable rate of return.

Costs

Because entities affected by these regulations already participate in the Title IV, HEA programs, these lenders, guaranty agencies, and schools must already have systems and procedures in place to meet program eligibility requirements. The non-CCRAA regulations in this package generally would require discrete changes in specific parameters associated with existing guidance, such as the provision of entrance counseling, the retention of records, or the submission of data to NSLDS, rather than wholly new requirements. Accordingly, entities wishing to continue to participate in the student aid programs have already absorbed most of the administrative costs related to implementing these regulations. Marginal costs over this baseline are primarily related to one-time system changes, which in some cases could be significant. In assessing the potential impact of the proposed non-CCRAA regulations, the Department recognizes that certain provisions, primarily those requiring the assignment of Perkins Loans and entrance counseling for graduate and professional PLUS Loan borrowers, will result in additional workload for staff at some institutions of higher education. (This additional workload is discussed in more detail under the Paperwork Reduction Act of 1995 section of the NPRM.) Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. As noted in the NPRM, however, in this case, these costs would be offset by other provisions in the regulations, primarily those involving changes to the maximum length of loan period, which result in workload reductions that greatly outweigh the estimated additional burden.

In weighing the costs and benefits of these regulations, the Department considered a range of possible outcomes, many of which were raised during the negotiated rulemaking discussions. (The following summarizes these considerations for a number of provisions; a more complete discussion for all provisions is available in the *Reasons* sections of the NPRM.) For prohibited inducements, for example, several negotiators expressed concern that the proposed regulations might have a negative impact on the numerous business arrangements between schools and financial institutions or reduce philanthropic giving to institutions of higher education; others suggested the regulations could have a ''chilling effect'' on school and lender relationships. Conversely, other negotiators expressed the view that eliminating improper inducements would end the practice of schools actively ''steering'' borrowers to particular lenders and limit the appearance of ''redlining'' by lenders targeting benefits on certain classes of borrowers, greatly enhancing the credibility of the loan process.

On balance, the Department believes that these regulations adequately implement the statutory requirements in the HEA's prohibited inducement provisions and does not believe it will affect unrelated contracts or agreements between postsecondary institutions and financial institutions or general philanthropic giving by financial institutions. Some negotiators believed that borrowers are being inappropriately steered to various lenders through the use of inducements provided by lenders to schools and that these activities, if left unchecked, deny borrowers their choice of lender and undermine the credibility of the FFEL Program. The Secretary, through these regulations, is enhancing the borrower's choice of lender and providing for the disclosure of appropriate information.

In the area of preferred lender lists, some negotiators questioned the need to regulate in this area, fearing that the provisions would be administratively burdensome and could result in schools discontinuing the use of such lists. The non-Federal negotiators expressed concern that if schools discontinued using a preferred lender list, students would be subject to increased direct marketing from student loan lenders, which they viewed as counterproductive to the goal of educating students and parents about the student loan process. At the same time, some raised the possibility that school workload would increase in the absence of preferred lender lists, as students and parents would seek more information directly from the school about choosing a lender. Non-Federal negotiators also objected to our proposal that schools choosing to continue use of preferred lender lists be required to not only disclose the method and criteria used by the school to choose the lenders on the school's preferred lender list, but also provide comparative information on the interest rates and other borrower benefits offered by those lenders. The non-Federal negotiators believed that this would represent a significant administrative burden and that schools could not ensure the accuracy of the information on borrower-benefit offerings.

The Department believes the disclosure of supporting information and data with the list of preferred lenders is the most efficient and effective method to ensure that borrowers make informed consumer decisions. The Department understands that providing comparative interest rate and benefit information, in addition to describing the method and criteria used to select lenders for the list, will involve additional efforts for schools in preparing and providing a preferred lender list. To assist schools with this effort, the Department is developing a model format that a school may use to present this information.

In general, the Department believes these provisions will produce the general benefits of greater borrower choice and information and enhanced faith in the integrity and transparency of the loan program. While it is possible that some institutions will incur significant costs, we believe we have provided opportunities, such as the model form, to minimize these costs and that, on balance, the costs are outweighed by the likely benefits.

The Department also agrees that schools should not be discouraged from negotiating with lenders for the best possible interest rates and borrower benefits for their borrowers. As a result, the regulations, while continuing to prohibit a school's solicitation of payments and other benefits from a lender for the school or its employees in exchange for the lender's placement on the school's list, do not prohibit a school from soliciting lenders for borrower benefits in exchange for placement on the school's list.

The regulatory provisions related to the CCRAA expand benefits to borrowers in a number of areas—primarily through the reduction of interest rates on Stafford Loans—that significantly increase Federal costs. The Department estimates that these provisions will increase Federal costs by $5.9 billion over fiscal years 2007–2012. These provisions will either reduce costs for student loan borrowers or offer new or extended benefits during periods of military service or economic hardship for over 25 million loans and as many as 22 million borrowers over fiscal years 2007–2012.

The CCRAA reduced interest rates on subsidized Stafford loans made to undergraduate students effective July 1, 2008. Rates are reduced from 6.8 percent to 6.0 percent for loans originated between July 1, 2008, and June 30, 2009; to 5.6 percent for the year beginning July 1, 2009; to 4.5 percent for the year beginning July 1, 2010; and to 3.4 percent for the year beginning July 1, 2011. (The rate returns to 6.8 percent for subsequent years.) The Department estimates that this change will increase Federal costs by $5.9 billion over 2007–2012. On the average Stafford Loan of $3,180, a borrower would repay $4,391 over a 10-year repayment period at a 6.8 percent annual rate. Under the CCRAA, borrowers will save $155 over 10 years ($1.29 per monthly payment) for loans originated in award year 2008–2009, rising to a $608 savings over 10 years ($5.07 per payment) for loans originated in award year 2011. Total savings for a borrower taking out an average loan in each year would be $1,393 over 10 years on borrowing of $12,733, or roughly 1 percent a year. The average student borrows roughly $9,000 in Stafford Loans over their time in school; their savings would be less.

The CCRAA revised the definition of economic hardship for the purpose of qualifying for a student loan deferment. The Department estimates that this change will have minimal effect on Federal costs. Previously, borrowers were eligible for a loan deferment if they earned 100 percent of the poverty line for a family of two or if their Federal educational debt burden exceeded 20 percent of adjusted gross income if the difference between the adjusted gross income minus the debt burden is less than 220 percent of the poverty line for a family of two. Effective October 1, 2007, the CCRAA eliminates the debt burden provision for all borrowers and ties the income criteria to 150 percent of the poverty line applicable to the borrower's family size. Removing the debt burden test restricts eligibility for the economic hardship deferment while relaxing the family income criteria increases eligibility. The Department only collects income data on borrowers choosing the income-contingent repayment option, who represent roughly 15 percent of the outstanding portfolio. Using this group as a proxy for the total population in repayment, the Department estimates the changes in the CCRAA counteract one another, resulting in roughly one-third of borrowers meeting the eligibility requirements before and after the statutory change. A substantial portion of borrowers who qualify for economic hardship never apply for the deferment.

The CCRAA extends the military deferment to all Title IV borrowers regardless of when their loans were made, eliminates the 3-year limit on the military deferment and adds a 180-day period of deferment following the borrower's demobilization effective October 1, 2007. The law also authorizes a 13-month deferment following conclusion of their military service for certain members of the Armed Forces who were enrolled in a program of instruction at an eligible institution at the time, or within 6 months prior to the time the borrower was called to active duty effective October 1, 2007. Using figures provided by the Congressional Budget Office, the Department of Defense, and the Department's National Postsecondary Student Aid Survey, the Department estimates there will be 12,000 active duty military personnel with outstanding loans out of a total of 216,000 deployed in 2007, decreasing to 3,100 out of 55,000 in 2011. These borrowers have outstanding debt of $49 million in 2007. Assuming 15 months of deployment and the appropriate new additional new post-deployment deferments, the Department estimates the interest subsidy provided to these borrowers would be $17 million over 2007–2012.

Assumptions, Limitations, and Data Sources

Estimates provided above reflect a baseline in which the changes implemented in these regulations do not exist. As part of the regulatory impact analysis included in the NPRM, the Department requested comments or information from the public for consideration in assessing its preliminary estimates. No such comments or information related to data used in the preliminary estimates were received during the comment period. In the absence of such information, and given that internal reviews have revealed no problems or significant new information, the estimates included in the NPRM should be considered final.

In developing these estimates, a wide range of data sources were used, including NSLDS data, operational and financial data from Department of Education systems, and data from a range of surveys conducted by the National Center for Education Statistics, such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 1 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of transfers related to changes in Federal student aid payments as a result of these final regulations. Estimated transfers of −$2,914 million reflect annualized savings, discounted at 7 percent, related to −$13,889 million in net savings as estimated using traditional credit reform scoring conventions. Alternatively, if transfers are discounted at 3 percent, annualized transfers would equal −$2,906 million in estimated net savings of −$15,743 million. Expenditures are classified as transfers to postsecondary students; savings are classified as transfers from program participants (lenders, guaranty agencies).

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]

Category	Transfers
Annualized Monetized Transfers	−$2,914
From Whom To Whom?	Federal Government To Postsecondary Students; Student Aid Program Participants to Federal Government.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Flexibility Act. Individuals are also not defined as ''small entities'' under the Regulatory Flexibility Act.

A significant percentage of the lenders and schools participating in the Federal student loan programs meet the definition of ''small entities.'' While these lenders and schools fall within the SBA size guidelines, the non-CCRAA regulations do not impose significant new costs on these entities. The CCRAA-related provisions do not affect schools, but would have an impact on small lenders. As noted above in the Regulatory Impact Analysis, while these regulations may lead some small lenders to reconfigure their marketing, servicing, and profit expectations to accommodate lower Federal subsidies, the Department's preliminary analysis indicates these lenders will still be able to structure their operations to generate a reasonable rate of return.

In the NPRM the Secretary invited comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requested evidence to support that belief. Other than the comments discussed in the *Analysis of Comments and Changes* section regarding the mandatory assignment of Perkins Loans, we did not receive comments or evidence on this subject.

In addition to the provisions contained in the NPRM, these regulations contain provisions implementing non-discretionary provisions of the CCRAA. As discussed elsewhere in the preamble under the section entitled Waiver of Proposed Rulemaking—Regulations Implementing the CCRAA, the Secretary has determined for good cause shown that it is unnecessary to conduct notice-and-comment rulemaking pursuant to the APA on the regulations implementing the changes to these regulations resulting from the CCRAA. Specifically, these amendments simply modify the Department's regulations to reflect statutory changes made by the CCRAA, and these statutory changes are either already effective or will be effective within a short period of time. The Secretary does not have the discretion in whether or how to implement these changes. Accordingly, given that notice-and-comment rulemaking under the APA is not necessary for the regulations implementing the CCRAA, the provisions of the Regulatory Flexibility Act do not apply to those regulations.

Paperwork Reduction Act of 1995

These regulations contain information collection requirements that were reviewed in connection with the NPRM. The Department received no comments on the Paperwork Reduction Act portion of the NPRM. However, we are requesting further comment on information collection, OMB Control Number 1845–0019, consistent with an increase in burden related to the provisions in § 674.16(j).

Section 674.16(j) requires institutions that participate in the Perkins Loan Program to report enrollment and loan status information, or any Title IV related information required by the Secretary, to the Secretary by the deadline date established by the Secretary. As we mentioned in the preamble to the NPRM, the Department regularly discusses issues relating to NSLDS reporting of Title IV, HEA program participants through established workgroups and conference calls with Title IV, HEA program participants. These workgroups provided advice on the changes that have been made to the form requiring schools to report Perkins Loan data to NSLDS in a manner that is consistent with the way data on FFEL Loans and

Direct Loans are reported. These reporting changes will increase burden for Perkins Loan Program schools and will be associated with § 674.16(j) in the resubmission of OMB Control Number 1845–0019.

Additionally, the Department has determined that consistent with the provisions of § 682.604(c)(1), the requirement that guaranty agencies provide the name and location of the entity in possession of the original electronic Master Promissory Note (MPN) will entail a one-time increase in burden to make the appropriate software changes that will collect these data. The guaranty agencies are affected by these changes and their estimated burden will increase by 1,260 hours as reflected in OMB Control Number 1845–0020.

The Department has determined that, consistent with the provisions of § 674.16(j), the reporting of the borrower's academic year level for each Perkins borrower will increase the total burden by 11,340 total hours. Of that total burden hour increase, the following affected entities are estimated to have: 4,309 additional hours attributable to public institutions; 6,010 additional hours attributable to private institutions; and 1,021 additional hours attributable to for-profit institutions.

In regard to other information collection requirements described in the NPRM, the Paperwork Reduction Act of 1995 does not require a response to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

These final regulations also incorporate statutory changes made to the HEA by the CCRAA (Pub. L. 110–84). As discussed below, final regulations in §§ 674.34, 682.210, 682.305, 682.404, 682.415, and 685.204 contain information collection requirements. Under the Paperwork Reduction Act of 1995, the Department is requesting further comment on information collections, OMB Control Number 1845–0019, 1845–0020, and 1845–0021 consistent with the burden associated with the addition of these provisions in the final regulations.

Collection of Information: Perkins Loan Program, FFEL Program, and Direct Loan Program.

Sections 674.34, 682.210, and 685.204 (Deferment)

The final regulations in §§ 674.34, 682.210, and 685.204 extend the military deferment to all Title IV borrowers regardless of when their loans were made, eliminate the 3-year limit on the military deferment and add a 180-day period of deferment following the borrower's demobilization effective October 1, 2007. The changes made by the final regulations will allow more borrowers to establish eligibility for a military deferment and therefore represents an increase in burden for loan holders and borrowers. We estimate the changes will increase burden for borrowers and loan holders (and their servicers) by 1,000 hours and 500 hours, respectively. Thus we estimate a total burden increase of 1,500 hours in OMB Control Number 1845–0080.

The final regulations in §§ 674.34, 682.210, and 685.204 also provide for a 13-month deferment following de-activation of certain members of the Armed Forces who were enrolled, or enrolled within 6 months of being called to active duty effective July 1, 2008. The changes authorize a new deferment and therefore an increase in burden. We estimate that the changes will increase burden for borrowers and loan holders (and their servicers) by 650 hours and 350 hours, respectively. Thus, we estimate a total burden increase of 1,000 hours, and which will be reflected in a new OMB Collection under a newly designated OMB Control Number. A revised Military Deferment Request Form associated with these OMB Control Numbers will be submitted for OMB review by January 30, 2008.

Lastly, the final regulations in § 674.34 and § 682.210 revise the definition of economic hardship to increase allowable income for a borrower to establish eligibility for the economic hardship to 150 percent of the poverty line applicable to the borrower's family size. This change in eligibility requirements will allow more borrowers to establish eligibility for an economic hardship deferment and represents an increase in burden. We estimate that the changes will increase burden for borrowers and loan holders (and their servicers) by 650 hours and 350 hours, respectively. Thus, we estimate a total burden increase of 1,000 hours in OMB Control Numbers 1845–0005 and 1845–0011. A revised Deferment Request Form associated with these OMB Control Numbers will be submitted for OMB review by December 10, 2007.

Section 682.305 (Procedures for Payment of Interest Benefits and Special Allowance and Collection of Origination and Loan Fees)

Final regulations in § 682.305 increase the loan fee a lender must pay to the Secretary from .50 to 1.0 percent of the principal amount of the loan for loans first disbursed on or after October 1, 2007. The changes do not represent a change in burden. Collection practices and procedures would not change; only the amount the lender must pay would change. Therefore, there is no additional burden associated with this provision.

Section 682.404 (Federal Reinsurance Agreement)

Final regulations in § 682.404 reduce the percentage of collections that a guaranty agency may retain from 23 to 16 percent and decrease account maintenance fees paid to guaranty agencies from 0.10 to 0.06 percent effective October 1, 2007. The changes do not represent a change in burden. Collection practices and fee payment procedures will not change; only the percentage of collections retained and the amount of fees paid would change. Therefore, there is no additional burden associated with this provision.

Section 682.415 (Special Insurance and Reinsurance Rules)

The final regulations eliminate the ''exceptional performer'' status and application procedures in § 682.415. This change represents a decrease in burden. We estimate that the changes will decrease burden for lenders (and their servicers) by 2,880 hours in OMB Control Number 1845–0020.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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/FedRegister.*

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 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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.access.gpo.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number: 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects in 34 CFR Parts 674, 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, and Vocational education.

Dated: October 23, 2007.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

■ 2. Section 674.8 is amended by:
■ A. In paragraph (d)(1), removing the words ''; or'' and adding in their place the punctuation ''.''.
■ B. Adding a new paragraph (d)(3).

The addition reads as follows:

§ 674.8 Program participation agreement.

* * * * *

(d) * * *

(3) The institution shall, at the request of the Secretary, assign its rights to a loan to the United States without recompense if—

(i) The amount of outstanding principal is $100.00 or more;

(ii) The loan has been in default, as defined in § 674.5(c)(1), for seven or more years; and

(iii) A payment has not been received on the loan in the preceding twelve months, unless payments were not due because the loan was in a period of authorized forbearance or deferment.

* * * * *

■ 3. Section 674.16 is amended by adding new paragraph (j) to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(j) The institution must report enrollment and loan status information, or any Title IV loan-related information required by the Secretary, to the Secretary by the deadline date established by the Secretary.

* * * * *

■ 4. Section 674.19 is amended by:
■ A. Redesignating paragraph (e)(2)(i) as paragraph (e)(2)(iii).
■ B. Adding new paragraph (e)(2)(i).
■ C. Revising paragraph (e)(2)(ii).
■ D. Revising paragraph (e)(3).
■ E. In paragraph (e)(4)(i), removing the words ''Master Promissory Note (MPN)'' and adding, in their place, the word ''MPN''.
■ F. Revising paragraph (e)(4)(ii).

The addition and revisions read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(2) * * *

(i) An institution shall retain a record of disbursements for each loan made to a borrower on a Master Promissory Note (MPN). This record must show the date and amount of each disbursement.

(ii) For any loan signed electronically, an institution must maintain an affidavit or certification regarding the creation and maintenance of the institution's electronic MPN or promissory note, including the institution's authentication and signature process in accordance with the requirements of § 674.50(c)(12).

* * * * *

(3) *Period of retention of disbursement records, electronic authentication and signature records, and repayment records.*

(i) An institution shall retain disbursement and electronic authentication and signature records for each loan made using an MPN for at least three years from the date the loan is canceled, repaid, or otherwise satisfied.

(ii) An institution shall retain repayment records, including cancellation and deferment requests for at least three years from the date on which a loan is assigned to the Secretary, canceled or repaid.

(4) * * *

(ii) If a promissory note was signed electronically, the institution must store it electronically and the promissory note must be retrievable in a coherent format. An original electronically signed MPN must be retained by the institution for 3 years after all the loans made on the MPN are satisfied.

* * * * *

■ 5.Section 674.34 is amended by:
■ A. Revising paragraph (e)(3)(ii).
■ B. In paragraph (h)(1), adding the words '', an NDSL, or a Defense Loan'' after the words ''a Federal Perkins Loan'', removing the words ''made on or after July 1, 2001'', and removing the words ''not to exceed 3 years''.
■ C. Adding a new paragraph (h)(6).
■ D. Redesignating paragraphs (i) and (j) as paragraphs (j) and (k), respectively.
■ E. Adding a new paragraph (i).
■ F. In newly redesignated paragraph (j), removing the words ''and (h)'', and adding in their place, the words ''(h) and (i)''.

The additions and revision read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs and Defense loans.

(e) * * *

(3) * * *

(ii) An amount equal to 150 percent of the poverty line applicable to the borrower's family size, as determined in accordance with section 673(2) of the Community Service Block Grant Act.

* * * * *

(h) * * *

(6) The deferment period ends 180 days after the demobilization date for the service described in paragraphs (h)(1)(i) and (h)(1)(ii) of this section.

* * * * *

(i)(1) A borrower of a Federal Perkins loan, an NDSL, or a Defense loan who is called to active duty military service need not pay principal and interest does not accrue for up to 13 months following the conclusion of the borrower's active duty military service if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (i)(1) of this section, ''Active duty'' means active duty as defined in section 101(d)(1) of title 10, United States Code, except—

(i) Active duty includes active State duty for members of the National Guard; and

(ii) Active duty does not include active duty for training or attendance at a service school.

(3) If the borrower returns to enrolled student status during the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status.

* * * * *

■ 6. Section 674.38 is amended by:
■ A. In paragraph (a)(1), removing the words ''(a)(2)'' and adding, in their place, the words ''(a)(5)''.

■ B. Redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(5) and (a)(7), respectively.
■ C. Adding new paragraphs (a)(2), (a)(3), (a)(4), and (a)(6).

The additions read as follows:

§ 674.38 Deferment procedures.

* * * * *

(a) * * *

(2) After receiving a borrower's written or verbal request, an institution may grant a deferment under §§ 674.34(b)(1)(ii), 674.34(b)(1)(iii), 674.34(b)(1)(iv), 674.34(d), 674.34(e), 674.34(h), and 674.34(i) if the institution is able to confirm that the borrower has received a deferment on another Perkins Loan, a FFEL Loan, or a Direct Loan for the same reason and the same time period. The institution may grant the deferment based on information from the other Perkins Loan holder, the FFEL Loan holder or the Secretary or from an authoritative electronic database maintained or authorized by the Secretary that supports eligibility for the deferment for the same reason and the same time period.

(3) An institution may rely in good faith on the information it receives under paragraph (a)(2) of this section when determining a borrower's eligibility for a deferment unless the institution, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. An institution must resolve any discrepant information before granting a deferment under paragraph (a)(2) of this section.

(4) An institution that grants a deferment under paragraph (a)(2) of this section must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

* * * * *

(6) In the case of a military service deferment under §§ 674.34(h) and 674.35(c)(1), a borrower's representative may request the deferment on behalf of the borrower. An institution that grants a military service deferment based on a request from a borrower's representative must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The institution may also notify the borrower's representative of the outcome of the deferment request.

* * * * *

■ 7. Section 674.45 is amended by:
■ A. Redesignating paragraph (e)(3) as paragraph (e)(4).
■ B. Adding new paragraph (e)(3).

The addition reads as follows:

§ 674.45 Collection procedures.

* * * * *

(e) * * *

(3) For loans placed with a collection firm on or after July 1, 2008, reasonable collection costs charged to the borrower may not exceed—

(i) For first collection efforts, 30 percent of the amount of principal, interest, and late charges collected;

(ii) For second and subsequent collection efforts, 40 percent of the amount of principal, interest, and late charges collected; and

(iii) For collection efforts resulting from litigation, 40 percent of the amount of principal, interest, and late charges collected plus court costs.

* * * * *

■ 8. Section 674.50 is amended by:
■ A. Adding new paragraphs (c)(11) and (12).
■ B. In paragraph (e)(1), adding the words '', unless the loan is submitted for assignment under 674.8(d)(3)'' immediately after the word ''borrower''.

The additions read as follows:

§ 674.50 Assignment of defaulted loans to the United States.

* * * * *

(c) * * *

(11) A record of disbursements for each loan made to a borrower on an MPN that shows the date and amount of each disbursement.

(12)(i) Upon the Secretary's request with respect to a particular loan or loans assigned to the Secretary and evidenced by an electronically signed promissory note, the institution that created the original electronically signed promissory note must cooperate with the Secretary in all activities necessary to enforce the loan or loans. Such institution must provide—

(A) An affidavit or certification regarding the creation and maintenance of the electronic records of the loan or loans in a form appropriate to ensure admissibility of the loan records in a legal proceeding. This affidavit or certification may be executed in a single record for multiple loans provided that this record is reliably associated with the specific loans to which it pertains; and

(B) Testimony by an authorized official or employee of the institution, if necessary, to ensure admission of the electronic records of the loan or loans in the litigation or legal proceeding to enforce the loan or loans.

(ii) The affidavit or certification in paragraph (c)(12)(i)(A) of this section must include, if requested by the Secretary—

(A) A description of the steps followed by a borrower to execute the promissory note (such as a flowchart);

(B) A copy of each screen as it would have appeared to the borrower of the loan or loans the Secretary is enforcing when the borrower signed the note electronically;

(C) A description of the field edits and other security measures used to ensure integrity of the data submitted to the originator electronically;

(D) A description of how the executed promissory note has been preserved to ensure that it has not been altered after it was executed;

(E) Documentation supporting the institution's authentication and electronic signature process; and

(F) All other documentary and technical evidence requested by the Secretary to support the validity or the authenticity of the electronically signed promissory note.

(iii) The Secretary may request a record, affidavit, certification or evidence under paragraph (a)(6) of this section as needed to resolve any factual dispute involving a loan that has been assigned to the Secretary including, but not limited to, a factual dispute raised in connection with litigation or any other legal proceeding, or as needed in connection with loans assigned to the Secretary that are included in a Title IV program audit sample, or for other similar purposes. The institution must respond to any request from the Secretary within 10 business days.

(iv) As long as any loan made to a borrower under a MPN created by an institution is not satisfied, the institution is responsible for ensuring that all parties entitled to access to the electronic loan record, including the Secretary, have full and complete access to the electronic loan record.

* * * * *

■ 9. Section 674.56 is amended by revising paragraph (b)(1) to read as follows:

§ 674.56 Employment cancellation—Federal Perkins loan, NDSL, and Defense loan.

* * * * *

(b) *Cancellation for full-time employment in a public or private nonprofit child or family service agency.* (1) An institution must cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or NDSL made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing services directly and exclusively to high-risk children who are from low-income communities and the families of these children, or who is supervising the provision of services to high-risk children who are from low-income communities and the families of these children. To qualify for a child or family service cancellation, a non-supervisory employee of a child or family service agency must be providing services only to high-risk children from low-income communities and the families of these children. The employee must work directly with the high-risk children from low-income communities, and the services provided to the children's families must be secondary to the services provided to the children.

* * * * *

■ 10. Section 674.61 is amended by:

■ A. Revising the second sentence in paragraph (a).

■ B. Revising paragraphs (b), (c), and (d).

The revisions read as follows:

§ 674.61 Discharge for death or disability.

(a) * * * The institution must discharge the loan on the basis of an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate. * * *

(b) *Total and permanent disability*—(1) *General.* A borrower's Defense, NDSL, or Perkins loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 674.51(s), and satisfies the additional eligibility requirements contained in this section.

(2) *Discharge application process.* (i) To qualify for discharge of a Defense, NDSL, or Perkins loan based on a total and permanent disability, a borrower must submit a discharge application approved by the Secretary to the institution that holds the loan.

(ii) The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 674.51(s).

(iii) The borrower must submit the application to the institution within 90 days of the date the physician certifies the application.

(iv) Upon receiving the borrower's complete application, the institution must suspend collection activity on the loan and inform the borrower that—

(A) The institution will review the application and assign the loan to the Secretary for an eligibility determination if the institution determines that the certification supports the conclusion that the borrower is totally and permanently disabled, as defined in § 674.51(s);

(B) The institution will resume collection on the loan if the institution determines that the certification does not support the conclusion that the borrower is not totally and permanently disabled; and

(C) If the institution concludes that the certification and other evidence submitted by the borrower supports the borrower's eligibility for a total and permanent disability discharge, to remain eligible for the final discharge, the borrower must, from the date the physician completes and certifies the borrower's total and permanent disability on the application until the date the borrower receives a final disability discharge—

(*1*) Not receive annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(*2*) Not receive a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans on which the borrower is seeking a discharge; and

(*3*) Must ensure that the full amount of any Title IV loan disbursement made to the borrower on or after the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.

(v) If, after reviewing the borrower's application, the institution determines that the application is complete and supports the conclusion that the borrower is totally and permanently disabled, the institution must assign the loan to the Secretary.

(vi) At the time the loan is assigned to the Secretary, the institution must notify the borrower that the loan has been assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan.

(3) *Secretary's initial eligibility determination.* (i) If the Secretary determines that the borrower is totally and permanently disabled as defined in § 674.51(s), the Secretary notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years, beginning on the date the physician certified the borrower's total and permanent disability on the discharge application. The notification to the borrower identifies the conditions of the conditional discharge period specified in paragraph (b)(2)(iv)(C) of this section.

(ii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge in paragraph (c)(4)(i) of this section, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(4) *Eligibility requirements for a total and permanent disability discharge.* (i) A borrower meets the eligibility criteria for a discharge of a loan based on a total and permanent disability if, from the date the physician certifies the borrower's discharge application, through the end of the three-year conditional discharge period—

(A) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) The borrower does not receive a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans that are in a conditional discharge status; and

(C) The borrower ensures that the full amount of any title IV loan disbursement received after the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.

(ii) During the conditional discharge period, the borrower or, if applicable, the borrower's representative—

(A) Is not required to make any payments on the loan;

(B) Is not considered past due or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;

(C) Must promptly notify the Secretary of any changes in address or phone number;

(D) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (b)(2)(ii)(C)(*1*) of this section; and

(E) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for a discharge under this section.

(iii) If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the borrower does not continue to meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional discharge period and resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the Secretary's initial eligibility determination described in paragraph (b)(3) of this section through the end of the conditional discharge period.

(iv) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is disabled. As part of this review, or at any time during the application process or during or at the end of the conditional discharge period, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the applicant.

(5) *Payments received after the physician's certification of total and permanent disability.* (i) If, after the date the physician completes and certifies the borrower's loan discharge application, the institution receives any payments from or on behalf of the borrower on or attributable to a loan that was assigned to the Secretary for determination of eligibility for a total and permanent disability discharge, the institution must forward those payments to the Secretary for crediting to the borrower's account.

(ii) At the same time that the institution forwards the payment, it must notify the borrower that there is no obligation to make payments on the loan while it is conditionally discharged prior to a final determination of eligibility for a total and permanent disability discharge, unless the Secretary directs the borrower otherwise.

(iii) When the Secretary makes a final determination to discharge the loan, the Secretary returns any payments received on the loan after the date the physician completed and certified the borrower's loan discharge application to the person who made the payments on the loan.

(c) *No Federal reimbursement.* No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive.* Discharge for death applies retroactively to all Defense, NDSL, and Perkins loans.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 11. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2 unless otherwise noted.

■ 12. Section 682.200(b) is amended by:
■ A. Revising paragraph (5) of the definition of *Lender*.
■ B. Adding new paragraphs (7) and (8) to the definition of *Lender*.
■ C. Adding a definition of *School-affiliated organization*.

The revisions and additions read as follows:

§ 682.200 Definitions.

(b) * * *

Lender. (1) * * *

(5)(i) The term *eligible lender* does not include any lender that the Secretary determines, after notice and opportunity for a hearing before a designated Department official, has, directly or through an agent or contractor—

(A) Except as provided in paragraph (5)(ii) of this definition, offered, directly or indirectly, points, premiums, payments, or other inducements to any school or other party to secure applications for FFEL loans or to secure FFEL loan volume. This includes but is not limited to—

(*1*) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower in exchange for applying for or accepting a FFEL loan from the lender;

(*2*) Payments or other benefits to a school, any school-affiliated organization or to any individual in exchange for FFEL loan applications, application referrals, or a specified volume or dollar amount of loans made, or placement on a school's list of recommended or suggested lenders;

(*3*) Payments or other benefits provided to a student at a school who acts as the lender's representative to secure FFEL loan applications from individual prospective borrowers;

(*4*) Payments or other benefits to a loan solicitor or sales representative of a lender who visits schools to solicit individual prospective borrowers to apply for FFEL loans from the lender;

(*5*) Payment to another lender or any other party of referral fees or processing fees, except those processing fees necessary to comply with Federal or State law;

(*6*) Solicitation of an employee of a school or school-affiliated organization to serve on a lender's advisory board or committee and/or payment of costs incurred on behalf of an employee of a school or school-affiliated organization to serve on a lender's advisory board or committee;

(*7*) Payment of conference or training registration, transportation, and lodging costs for an employee of a school or school-affiliated organization;

(*8*) Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation, and other gratuities related to lender-sponsored activities for employees of a school or a school-affiliated organization;

(*9*) Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, or a specified volume or dollar amount of FFEL loans made, or placement on a school's list of recommended or suggested lenders; and

(*10*) Staffing services to a school, except for services provided to participating foreign schools at the direction of the Secretary, as a third-party servicer or otherwise on more than a short-term, emergency basis, and which is non-recurring, to assist a school with financial aid-related functions.

(B) Conducted unsolicited mailings to a student or a student's parents of FFEL loan application forms, except to a student who previously has received a FFEL loan from the lender or to a student's parent who previously has received a FFEL loan from the lender;

(C) Offered, directly or indirectly, a FFEL loan to a prospective borrower to induce the purchase of a policy of insurance or other product or service by the borrower or other person; or

(D) Engaged in fraudulent or misleading advertising with respect to its FFEL loan activities.

(ii) Notwithstanding paragraph (5)(i) of this definition, a lender, in carrying out its role in the FFEL program and in attempting to provide better service, may provide—

(A) Assistance to a school that is comparable to the kinds of assistance provided to a school by the Secretary under the Direct Loan program, as identified by the Secretary in a public announcement, such as a notice in the **Federal Register**;

(B) Support of and participation in a school's or a guaranty agency's student aid and financial literacy-related outreach activities, excluding in-person school-required initial or exit counseling, as long as the name of the entity that developed and paid for any materials is provided to the participants and the lender does not promote its student loan or other products;

(C) Meals, refreshments, and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees;

(D) Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission service for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(E) A reduced origination fee in accordance with § 682.202(c);

(F) A reduced interest rate as provided under the Act;

(G) Payment of Federal default fees in accordance with the Act;

(H) Purchase of a loan made by another lender at a premium;

(I) Other benefits to a borrower under a repayment incentive program that requires, at a minimum, one or more scheduled payments to receive or retain the benefit or under a loan forgiveness program for public service or other targeted purposes approved by the Secretary, provided these benefits are not marketed to secure loan applications or loan guarantees;

(J) Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will; and

(K) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the **Federal Register**.

(iii) For the purposes of paragraph (5) of this definition—

(A) The term ''school-affiliated organization'' is defined in § 682.200.

(B) The term ''applications'' includes the Free Application for Federal Student Aid (FAFSA), FFEL loan master promissory notes, and FFEL consolidation loan application and promissory notes.

(C) The term ''other benefits'' includes, but is not limited to, preferential rates for or access to the lender's other financial products, computer hardware or non-loan processing or non-financial aid-related computer software at below market rental or purchase cost, and printing and distribution of college catalogs and other materials at reduced or no cost.

(D) The term ''emergency basis'' for the purpose of staffing services to a school under paragraph (i)(A)(10) of this section means a state- or Federally-declared natural disaster, a Federally-declared national disaster, and other localized disasters and emergencies identified by the Secretary.

* * * * *

(7) An eligible lender may not make or hold a loan as trustee for a school, or for a school-affiliated organization as defined in this section, unless on or before September 30, 2006—

(i) The eligible lender was serving as trustee for the school or school-affiliated organization under a contract entered into and continuing in effect as of that date; and

(ii) The eligible lender held at least one loan in trust on behalf of the school or school-affiliated organization on that date.

(8) As of January 1, 2007, and for loans first disbursed on or after that date under a trustee arrangement, an eligible lender operating as a trustee under a contract entered into on or before September 30, 2006, and which continues in effect with a school or a school-affiliated organization, must comply with the requirements of § 682.601(a)(3), (a)(5), and (a)(7).

* * * * *

School-affiliated organization. A school-affiliated organization is any organization that is directly or indirectly related to a school and includes, but is not limited to, alumni organizations, foundations, athletic organizations, and social, academic, and professional organizations.

* * * * *

■ 13. Section 682.202 is amended by:

■ A. Adding new paragraph (a)(1)(x).

■ B. In paragraph (b)(2), adding the words, ''and (b)(5)'' immediately after the words ''(b)(4)''.

■ C. Redesignating paragraph (b)(5) as paragraph (b)(6).

■ D. Adding a new paragraph (b)(5).

The addition reads as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) * * *

(1) * * *

(x) For a subsidized Stafford loan made to an undergraduate student for which the first disbursement is made on or after:

(A) July 1, 2006 and before July 1, 2008, the interest rate is 6.8 percent on the unpaid principal balance of the loan.

(B) July 1, 2008 and before July 1, 2009, the interest rate is 6 percent on the unpaid principal balance of the loan.

(C) July 1, 2009 and before July 1, 2010, the interest rate is 5.6 percent on the unpaid principal balance of the loan.

(D) July 1, 2010 and before July 1, 2011, the interest rate is 4.5 percent on the unpaid principal balance of the loan.

(E) July 1, 2011 and before July 2012, the interest rate is 3.4 percent on the unpaid balance of the loan.

* * * * *

(b) * * *

(5) For Consolidation loans, the lender may capitalize interest as provided in paragraphs (b)(2) and (b)(3) of this section, except that the lender may capitalize the unpaid interest for a period of authorized in-school deferment only at the expiration of the deferment.

* * * * *

■ 14. Section 682.208 is amended by:

■ A. Revising paragraph (a).

■ B. Adding new paragraphs (b)(3) and (b)(4).

■ C. Adding a new paragraph (i).

The revisions and addition read as follows:

§ 682.208 Due diligence in servicing a loan.

(a) The loan servicing process includes reporting to national credit bureaus, responding to borrower inquiries, establishing the terms of repayment, and reporting a borrower's enrollment and loan status information.

(b) * * *

(3) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a) or notification from a credit bureau that information furnished by the lender is a result of an alleged identity theft as defined in § 682.402(e)(14), an eligible lender shall suspend credit bureau reporting for a period not to exceed 120 days while the lender determines the enforceability of a loan.

(i) If the lender determines that a loan does not qualify for a discharge under § 682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must—

(A) Notify the credit bureau of its determination; and

(B) Comply with §§ 682.300(b)(2)(ix) and 682.302(d)(1)(viii).

(ii) [Reserved]

(4) If, within 3 years of the lender's receipt of an identity theft report, the lender receives from the borrower evidence specified in § 682.402(e)(3)(v), the lender may submit a claim and receive interest subsidy and special allowance payments that would have accrued on the loan.

* * * * *

(i) A lender shall report enrollment and loan status information, or any Title IV loan-related data required by the Secretary, to the guaranty agency or to the Secretary, as applicable, by the deadline date established by the Secretary.

* * * * *

■ 15. Section 682.209 is amended by adding new paragraph (k) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(k) Any lender holding a loan is subject to all claims and defenses that the borrower could assert against the school with respect to that loan if—

(1) The loan was made by the school or a school-affiliated organization;

(2) The lender who made the loan provided an improper inducement, as described in paragraph (5)(i) of the definition of *Lender* in § 682.200(b), to the school or any other party in connection with the making of the loan;

(3) The school refers borrowers to the lender; or

(4) The school is affiliated with the lender by common control, contract, or business arrangement.

* * * * *

■ 16. Section 682.210 is amended by:

■ A. In paragraph (i)(1), adding the words, ''or a borrower's representative'' immediately following the words ''a borrower''.

■ B. Adding new paragraph (i)(5).

■ C. In paragraph (s), adding, immediately following the words ''(1) *General.*'', the paragraph designation ''(i)''.

■ D. Adding new paragraphs (s)(1)(ii), (s)(1)(iii), (s)(1)(iv), and (s)(1)(v).

■ E. Revising paragraph (s)(6)(iii)(B).

■ F. In paragraph (t), removing from the heading the words ''for loans for which the first disbursement is made on or after July 1, 2001''.

■ G. In paragraph (t)(1), removing the words ''first disbursed on or after July 1, 2001'', and removing the words ''not to exceed 3 years''.

■ H. Removing paragraph (t)(5).

■ I. Redesignating paragraphs (t)(2), (t)(3), and (t)(4), as paragraphs (t)(3), (t)(4), and (t)(5), respectively.

■ J. Adding new paragraphs (t)(2), (t)(7), and (t)(8).

■ K. Adding new paragraph (u).

■ L. Adding a new parenthetical phrase after new paragraph (u).

The additions read as follows:

§ 682.210 Deferment.

* * * * *

(i) * * *

(5) A lender that grants a military service deferment based on a request from a borrower's representative must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The lender may also notify the borrower's representative of the outcome of the deferment request.

* * * * *

(s) * * *

(1) * * *

(ii) As a condition for receiving a deferment, except for purposes of paragraph (s)(2) of this section, the borrower must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment.

(iii) After receiving a borrower's written or verbal request, a lender may grant a deferment under paragraphs (s)(3) through (s)(6) of this section if the lender is able to confirm that the borrower has received a deferment on another FFEL loan or on a Direct Loan for the same reason and the same time period. The lender may grant the deferment based on information from the other FFEL loan holder or the Secretary or from an authoritative electronic database maintained or authorized by the Secretary that supports eligibility for the deferment for the same reason and the same time period.

(iv) A lender may rely in good faith on the information it receives under paragraph (s)(1)(iii) of this section when determining a borrower's eligibility for a deferment unless the lender, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. A lender must resolve any discrepant information before granting a deferment under paragraph (s)(1)(iii) of this section.

(v) A lender that grants a deferment under paragraph (s)(1)(iii) of this section must notify the borrower that the deferment has been granted and that the borrower has the option to pay interest that accrues on an unsubsidized FFEL loan or to cancel the deferment and continue to make payments on the loan.

* * * * *

(6) * * *

(iii) * * *

(B) An amount equal to 150 percent of the poverty line applicable to the borrower's family size, as determined in accordance with section 673(2) of the Community Service Block Grant Act.

(t) * * *

(2) The deferment period ends 180 days after the demobilization date for the service described in paragraph (t)(1)(i) and (t)(1)(ii) of this section.

* * * * *

(7) To receive a military service deferment, the borrower, or the borrower's representative, must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment, except that a lender may grant a borrower a military service deferment under the procedures specified in paragraphs (s)(1)(iii) through (s)(1)(v) of this section.

(8) A lender that grants a military service deferment based on a request from a borrower's representative must notify the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The lender may also notify the borrower's representative of the outcome of the deferment request.

(u) *Military active duty student deferment.* (1) A borrower who receives an FFEL Program loan is entitled to receive a military active duty student deferment for 13 months following the conclusion of the borrower's active duty military service if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (u)(1) of this section, ''Active duty'' means active duty as defined in section 101(d)(1) of title 10, United States Code, except—

(i) Active duty includes active State duty for members of the National Guard; and

(ii) Active duty does not include active duty for training or attendance at a service school.

(3) If the borrower returns to enrolled student status during the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status.

(4) To receive a military active duty student deferment, the borrower must request the deferment and provide the lender with all information and documents required to establish eligibility for the deferment, except that a lender may grant a borrower a military active duty student deferment under the procedures specified in paragraphs (s)(1)(iii) through (s)(1)(v) of this section. (Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

■ 17. Section 682.211 is amended by:

■ A. Redesignating paragraphs (f)(6), (f)(7), (f)(8), (f)(9), (f)(10), and (f)(11) as paragraphs (f)(7), (f)(8), (f)(9), (f)(10), (f)(11), and (f)(12), respectively.

■ B. Adding new paragraph (f)(6).

The addition reads as follows:

§ 682.211 Forbearance.

* * * * *

(f) * * *

(6) Upon receipt of a valid identity theft report as defined in section 603(q)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681a) or notification from a credit bureau that information furnished by the lender is a result of an alleged identity theft as defined in § 682.402(e)(14), for a period not to exceed 120 days necessary for the lender to determine the enforceability of the loan. If the lender determines that the loan does not qualify for discharge under § 682.402(e)(1)(i)(C), but is nonetheless unenforceable, the lender must comply with §§ 682.300(b)(2)(ix) and 682.302(d)(1)(viii).

* * * * *

■ 18. Section 682.212 is amended by:

■ A. In paragraph (c), removing the words ''the Student Loan Marketing Association,''.

■ B. In paragraph (d), removing the words ''the Student Loan Marketing Association or''.

■ C. Adding new paragraph (h).

■ D. Adding a parenthetical phrase after paragraph (h).

The addition reads as follows:

§ 682.212 Prohibited transactions.

* * * * *

(h)(1) A school may, at its option, make available a list of recommended or suggested lenders, in print or any other medium or form, for use by the school's students or their parents, provided such list—

(i) Is not used to deny or otherwise impede a borrower's choice of lender;

(ii) Does not contain fewer than three lenders that are not affiliated with each other and that will make loans to borrowers or students attending the school; and

(iii) Does not include lenders that have offered, or have offered in response to a solicitation by the school, financial or other benefits to the school in exchange for inclusion on the list or any promise that a certain number of loan applications will be sent to the lender by the school or its students.

(2) A school that provides or makes available a list of recommended or suggested lenders must—

(i) Disclose to prospective borrowers, as part of the list, the method and criteria used by the school in selecting any lender that it recommends or suggests;

(ii) Provide comparative information to prospective borrowers about interest rates and other benefits offered by the lenders;

(iii) Include a prominent statement in any information related to its list of lenders, advising prospective borrowers that they are not required to use one of the school's recommended or suggested lenders;

(iv) For first-time borrowers, not assign, through award packaging or other methods, a borrower's loan to a particular lender;

(v) Not cause unnecessary certification delays for borrowers who use a lender that has not been recommended or suggested by the school; and

(vi) Update any list of recommended or suggested lenders and any information accompanying such a list no less often than annually.

(3) For the purposes of paragraph (h) of this section, a lender is affiliated with another lender if—

(i) The lenders are under the ownership or control of the same entity or individuals;

(ii) The lenders are wholly or partly owned subsidiaries of the same parent company; or

(iii) The directors, trustees, or general partners (or individuals exercising similar functions) of one of the lenders constitute a majority of the persons holding similar positions with the other lender. (Approved by the Office of Management and Budget under control number 1845–0020)

* * * * *

■ 19. Section 682.300 is amended by:

■ A. In paragraph (b)(2)(vii), removing the word ''or'' at the end of the paragraph.

■ B. In paragraph (b)(2)(viii), removing the punctuation ''.'' at the end of the paragraph and adding, in its place, ''; or''.

■ C. Adding new paragraph (b)(2)(ix).

The addition reads as follows:

§ 682.300 Payment of interest benefits on Stafford and Consolidation loans.

* * * * *

(b) * * *

(2) * * *

(ix) The date on which the lender determines the loan is legally unenforceable based on the receipt of an identity theft report under § 682.208(b)(3).

* * * * *

■ 20. Section 682.302 is amended by:

■ A. In paragraph (d)(1)(vi)(B), removing the word ''or'' at the end of the paragraph.

■ B. In paragraph (d)(1)(vii), by removing the punctuation ''.'' and adding, in its place, ''; or''.

■ C. Adding new paragraph (d)(1)(viii).

■ D. Redesignating paragraph (f) as paragraph (g).

■ E. Adding new paragraph (f).

The addition reads as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(d) * * *

(1) * * *

(viii) The date on which the lender determines the loan is legally unenforceable based on the receipt of an identity theft report under § 682.208(b)(3).

* * * * *

(f) *Special allowance rates for loans made on or after October 1, 2007.* With respect to any loan for which the first disbursement of principal is made on or after October 1, 2007, the special allowance rate for an eligible loan during a 3-month period is calculated according to the formulas described in paragraphs (f)(1) and (f)(2) of this section.

(1) Except as provided in paragraph (f)(2) of this section, the special allowance formula shall be computed by—

(i) Determining the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A) 1.79 percent to the resulting percentage for a Federal Stafford loan;

(B) 1.19 percent to the resulting percentage for a Federal Stafford Loan during the borrower's in-school period, grace period and authorized period of deferment;

(C) 1.79 percent to the resulting percentage for a Federal PLUS loan; and

(D) 2.09 percent to the resulting percentage for a Federal Consolidation loan; and

(iv) Dividing the resulting percentage by 4.

(2) For loans held by an eligible not-for-profit holder as defined in paragraph (f)(3) of this section, the special allowance formula shall be computed by—

(i) Determining the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H–15 (or its successor) for such 3-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A) 1.94 percent to the resulting percentage for a Federal Stafford loan;

(B) 1.34 percent to the resulting percentage for a Federal Stafford Loan during the borrower's in-school period, grace period and authorized period of deferment;

(C) 1.94 percent to the resulting percentage for a Federal PLUS loan; and

(D) 2.24 percent to the resulting percentage for a Federal Consolidation loan; and

(iv) Dividing the resulting percentage by 4.

(3)(i) For purposes of this section, the term ''eligible not-for-profit holder'' means an eligible lender under section 435(d) of the Act (except for a school) that is—

(A) A State, or a political subdivision, authority, agency, or other instrumentality thereof, including such entities that are eligible to issue bonds described in 26 CFR 1.103–1, or section 144(b) of the Internal Revenue Code of 1986;

(B) An entity described in section 150(d)(2) of the Internal Revenue Code of 1986 that has not made the election described in section 150(d)(3) of that Code;

(C) An entity described in section 501(c)(3) of the Internal Revenue Code of 1986; or

(D) A trustee acting as an eligible lender on behalf of a State, political subdivision, authority, agency, instrumentality, or other entity described in subparagraph (f)(3)(i)(A), (B), or (C) of this section.

(ii) An entity that otherwise qualifies under paragraph (f)(3) of this section shall not be considered an eligible not-for-profit holder unless such lender—

(A) Was, on the date of the enactment of the College Cost Reduction and Access Act, acting as an eligible lender; or

(B) Is a trustee acting as an eligible lender on behalf of an entity described in paragraph (f)(3)(ii)(A) of this section.

(iii) No political subdivision, authority, agency, instrumentality, or other entity described in paragraph (f)(3)(i)(A), (B), or (C) of this section shall be an eligible not-for-profit holder if the entity is owned or controlled, in whole or in part, by a for-profit entity.

(iv) No State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (f)(3)(i)(A), (B), or (C) of this section shall be an eligible not-for-profit holder with respect to any loan, or income from any loan, unless the State, political subdivision, authority, agency, instrumentality, or other entity described in paragraph (f)(3)(i)(A), (B), or (C) of this section is the sole owner of the beneficial interest in such loan and the income from such loan.

(v) A trustee described in paragraph (f)(3)(i)(D) of this section shall not receive compensation as consideration for acting as an eligible lender on behalf of an entity described in paragraph (f)(3)(i)(A), (B), or (C) of this section in excess of reasonable and customary fees.

(vi) For purposes of this paragraph, an otherwise eligible not-for-profit holder shall not—

(A) Be deemed to be owned or controlled, in whole or in part, by a for-profit entity; or

(B) Lose its status as the sole owner of a beneficial interest in a loan and the income from a loan by granting a security interest in, or otherwise pledging as collateral, such loan, or the income from such loan, to secure a debt obligation in the operation of an arrangement described in paragraph (f)(3)(i)(D) of this section.

(4) In the case of a loan for which the special allowance payment is calculated under paragraph (f)(2) of this section and that is sold by the eligible not-for-profit holder holding the loan to an entity that is not an eligible not-for-profit holder, the special allowance payment for such loan shall, beginning on the date of the sale, no longer be calculated under paragraph (f)(2) and shall be calculated under paragraph (f)(1) of this section instead.

* * * * *

■ 21. Section 682.305 is amended by:

■ A. Redesignating paragraph (a)(3)(ii) as paragraph (a)(3)(ii)(A).

■ B. Adding new paragraph (a)(3)(ii)(B).

The addition reads as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance and collection of origination and loan fees.

(a) * * *

(3) * * *

(ii) * * *

(B) For any FFEL loan made on or after October 1, 2007, a lender shall pay the Secretary a loan fee equal to 1.0 percent of the principal amount of the loan.

* * * * *

■ 22. Section 682.401 is amended by:

■ A. In paragraph (b)(2)(ii)(A), removing the punctuation '';'' at the end of the paragraph and adding, in its place, the words '', as defined in 34 CFR 668.3; or''.

■ B. Revising paragraph (b)(2)(ii)(B).

■ C. Removing paragraph (b)(2)(ii)(C).

■ D. In paragraph (b)(20), removing the number ''60'' and adding, in its place, the number ''35''.

■ E. Revising paragraph (e).

The revisions read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) A period attributable to the academic year that is not less than the period specified in paragraph (b)(2)(ii)(A) of this section, in which the student earns the amount of credit in the student's program of study required by the student's school as the amount necessary for the student to advance in academic standing as normally measured on an academic year basis (for example, from freshman to sophomore or, in the case of schools using clock hours, completion of at least 900 clock hours).

* * * * *

(e) *Prohibited activities.* (1) A guaranty agency may not, directly or through an agent or contractor—

(i) Except as provided in paragraph (e)(2) of this section, offer directly or indirectly from any fund or assets available to the guaranty agency, any premium, payment, or other inducement to any prospective borrower of an FFEL loan, or to a school or school-affiliated organization or an employee of a school or school-affiliated organization, to secure applications for FFEL loans. This includes, but is not limited to—

(A) Payments or offerings of other benefits, including prizes or additional financial aid funds, to a prospective borrower in exchange for processing a loan using the agency's loan guarantee;

(B) Payments or other benefits, including prizes or additional financial aid funds under any Title IV or State or private program, to a school or school-affiliated organization based on the school's or organization's voluntary or coerced agreement to use the guaranty agency for processing loans, or to provide a specified volume of loans using the agency's loan guarantee;

(C) Payments or other benefits to a school or any school-affiliated organization, or to any individual in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders;

(D) Payment of entertainment expenses, including expenses for private hospitality suites, tickets to shows or sporting events, meals, alcoholic beverages, and any lodging, rental, transportation or other gratuities related to any activity sponsored by the guaranty agency or a lender participating in the agency's program, for school employees or employees of school-affiliated organizations;

(E) Philanthropic activities, including providing scholarships, grants, restricted gifts, or financial contributions in exchange for FFEL loan applications or application referrals, a specified volume or dollar amount of FFEL loans using the agency's loan guarantee, or the placement of a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders; and

(F) Staffing services to a school, except for services provided to participating foreign schools at the direction of the Secretary, as a third-party servicer or otherwise on more than a short-term, emergency basis, which is non-recurring, to assist the institution with financial aid-related functions.

(ii) Assess additional costs or deny benefits otherwise provided to schools and lenders participating in the agency's program on the basis of the lender's or school's failure to agree to participate in the agency's program, or to provide a specified volume of loan applications or loan volume to the agency's program or to place a lender that uses the agency's loan guarantee on a school's list of recommended or suggested lenders.

(iii) Offer, directly or indirectly, any premium, incentive payment, or other inducement to any lender, or any person acting as an agent, employee, or independent contractor of any lender or other guaranty agency to administer or market FFEL loans, other than unsubsidized Stafford loans or subsidized Stafford loans made under a guaranty agency's lender-of-last-resort program, in an effort to secure the guaranty agency as an insurer of FFEL loans. Examples of prohibited inducements include, but are not limited to—

(A) Compensating lenders or their representatives for the purpose of securing loan applications for guarantee;

(B) Performing functions normally performed by lenders without appropriate compensation;

(C) Providing equipment or supplies to lenders at below market cost or rental; and

(D) Offering to pay a lender that does not hold loans guaranteed by the agency a fee for each application forwarded for the agency's guarantee.

(iv) Mail or otherwise distribute unsolicited loan applications to students enrolled in a secondary school or a postsecondary institution, or to parents of those students, unless the potential borrower has previously received loans insured by the guaranty agency.

(v) Conduct fraudulent or misleading advertising concerning loan availability.

(2) Notwithstanding paragraph (e)(1)(i), (ii), and (iii) of this section, a guaranty agency is not prohibited from providing—

(i) Assistance to a school that is comparable to that provided by the Secretary to a school under the Direct Loan Program, as identified by the Secretary in a public announcement, such as a notice in the **Federal Register**;

(ii) Default aversion activities approved by the Secretary under section 422(h)(4)(B) of the Act;

(iii) Student aid and financial-literacy related outreach activities, excluding in-person school-required initial and exit counseling, as long as the name of the entity that developed and paid for any materials is provided to participants and the guaranty agency does not promote its student loan or other products; but a guaranty agency may promote benefits provided under other Federal or State programs administered by the guaranty agency;

(iv) Meals and refreshments that are reasonable in cost and provided in connection with guaranty agency provided training of program participants and elementary, secondary, and postsecondary school personnel and with workshops and forums customarily used by the agency to fulfill its responsibilities under the Act;

(v) Meals, refreshments and receptions that are reasonable in cost and scheduled in conjunction with training, meeting, or conference events if those meals, refreshments, or receptions are open to all training, meeting, or conference attendees;

(vi) Travel and lodging costs that are reasonable as to cost, location, and duration to facilitate the attendance of school staff in training or service facility tours that they would otherwise not be able to undertake, or to participate in the activities of an agency's governing board, a standing official advisory committee, or in support of other official activities of the agency;

(vii) Toll-free telephone numbers for use by schools or others to obtain information about FFEL loans and free data transmission services for use by schools to electronically submit applicant loan processing information or student status confirmation data;

(viii) Payment of Federal default fees in accordance with the Act;

(ix) Items of nominal value to schools, school-affiliated organizations, and borrowers that are offered as a form of generalized marketing or advertising, or to create good will;

(x) Loan forgiveness programs for public service and other targeted purposes approved by the Secretary, provided the programs are not marketed to secure loan applications or loan guarantees; and

(xi) Other services as identified and approved by the Secretary through a public announcement, such as a notice in the **Federal Register**.

(3) For the purposes of this section—

(i) The term ''school-affiliated organization'' is defined in § 682.200.

(ii) The term ''applications'' includes the FAFSA, FFEL loan master promissory notes, and FFEL consolidation loan application and promissory notes.

(iii) The terms ''other benefits'' includes, but is not limited to, preferential rates for or access to a guaranty agency's products and services, computer hardware or non-loan processing or non-financial aid related computer software at below market rental or purchase cost, and the printing and distribution of college catalogs and other non-counseling or non-student financial aid-related materials at reduced or not costs.

(iv) The terms ''premium,'' ''incentive payment,'' and ''other inducement'' do not include services directly related to the enhancement of the administration of the FFEL Program that the guaranty agency generally provides to lenders that participate in its program. However, the terms ''premium,'' ''incentive payment,'' and ''inducement'' do apply to other activities specifically intended to secure a lender's participation in the agency's program.

(v) The term ''emergency basis'' for the purpose of staffing services to a school under paragraph (e)(1)(i)(F) of this section means a State- or Federally-declared natural disaster, a Federally-declared national disaster, and other localized disasters and emergencies identified by the Secretary.

* * * * *

■ 23. Section 682.402 is amended by:

■ A. Revising the first sentence in paragraph (b)(2).

■ B. Revising the third sentence in paragraph (b)(3).

■ C. Revising paragraph (c).

■ D. In paragraph (e)(2)(iv), adding the words ''or inaccurate'' immediately after the word ''adverse''.

■ E. In paragraph (e)(3)(v)(C), adding the words ''by a perpetrator named in the verdict or judgment'' at the end of the paragraph.

The revisions read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(b) * * *

(2) A discharge of a loan based on the death of the borrower (or student in the case of a PLUS loan) must be based on an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate. * * *

(3) * * * If the lender is not able to obtain an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate or other documentation acceptable to the guaranty agency, under the provisions of paragraph (b)(2) of this section, during the period of suspension, the lender must resume collection activity from the point that it had been discontinued. * * *

(c)(1) *Total and permanent disability.* A borrower's loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 682.200(b), and satisfies the additional eligibility requirements contained in this section.

(2) *Discharge application process.* After being notified by the borrower or the borrower's representative that the borrower claims to be totally and permanently disabled, the lender promptly requests that the borrower or the borrower's representative submit a discharge application to the lender, on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 682.200(b). The borrower must submit the application to the lender within 90 days of the date the physician certifies the application. If the lender and guaranty agency approve the discharge claim, under the procedures in paragraph (c)(5) of this section, the guaranty agency must assign the loan to the Secretary.

(3) *Secretary's initial eligibility determination.* (i) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician completes and certifies the borrower's application.

(ii) Upon making an initial determination that the borrower is totally and permanently disabled as defined in § 682.200(b), the Secretary notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years and that no payments are due on the loan. The notification to the borrower identifies the conditions of the conditional discharge specified in paragraph (c)(4)(i) of this section. The conditional discharge period begins on the date the physician certified on the application that the borrower is totally and permanently disabled, as defined in § 682.200(b).

(iii) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge in paragraph (c)(4)(i) of this section, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(4) *Eligibility requirements for total and permanent disability discharge.* (i) A borrower meets the eligibility criteria for a discharge of a loan based on total and permanent disability if, from the date the physician certifies the borrower's application, through the end of the three-year conditional discharge period—

(A) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(B) The borrower does not receive a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans that are in a conditional discharge status; and

(C) The borrower ensures that the full amount of any title IV loan disbursement on any loan received prior to the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.

(ii) During the conditional discharge period, the borrower or, if applicable, the borrower's representative—

(A) Is not required to make any payments on the loan;

(B) Is not considered delinquent or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;

(C) Must promptly notify the Secretary of any changes in address or phone number;

(D) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (c)(4)(i)(A) of this section; and

(E) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for a discharge under this section.

(iii) If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the conditional discharge period, the balance of the loan is discharged at the end of the conditional discharge period and any payments received after the physician completed and certified the borrower's loan discharge application are returned to the person who made the payments on the loan.

(iv) If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the borrower does not continue to meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional discharge period and resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the Secretary's initial eligibility determination described in paragraph (c)(3)(i) of this section through the end of the conditional discharge period.

(v) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is disabled. As part of this review or at any time during the application process or during or at the end of the conditional discharge period, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the applicant.

(5) *Lender and guaranty agency responsibilities.* (i) After being notified by a borrower or a borrower's representative that the borrower claims to be totally and permanently disabled, the lender must continue collection activities until it receives either the certification of total and permanent disability from a physician or a letter from a physician stating that the certification has been requested and that additional time is needed to determine if the borrower is totally and permanently disabled, as defined in § 682.200(b). Except as provided in paragraph (c)(5)(iii) of this section, after receiving the physician's certification or letter the lender may not attempt to collect from the borrower or any endorser.

(ii) The lender must submit a disability claim to the guaranty agency if the borrower submits a certification by a physician and the lender makes a determination that the certification supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as specified in paragraph (c)(4)(i) of this section.

(iii) If the lender determines that a borrower who claims to be totally and permanently disabled is not totally and permanently disabled, as defined in § 682.200(b), or if the lender does not receive the physician's certification of total and permanent disability within 60 days of the receipt of the physician's letter requesting additional time, as described in paragraph (c)(5)(i) of this section, the lender must resume collection and is deemed to have exercised forbearance of payment of both principal and interest from the date collection activity was suspended. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iv) The guaranty agency must pay a claim submitted by the lender if the guaranty agency has reviewed the application and determined that it is complete and that it supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as specified in paragraph (c)(4)(i) of this section.

(v) If the guaranty agency does not pay the disability claim, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for a disability discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(vi) If the guaranty agency pays the disability claim, the lender must notify the borrower that—

(A) The loan will be assigned to the Secretary for determination of eligibility for a total and permanent disability discharge and that no payments are due on the loan; and

(B) To remain eligible for the discharge from the date the physician completes and certifies the borrower's total and permanent disability on the application until the borrower receives a final disability discharge, the borrower—

(*1*) Cannot have annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Services Block Grant;

(*2*) Cannot receive any new Title IV loans except for a FFEL or Direct Consolidation Loan that does not include any loans on which the borrower is seeking a discharge; and

(*3*) Must ensure that the full amount of any Title IV loan disbursement made to the borrower on or after the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.

(vii) After receiving a claim payment from the guaranty agency, the lender must forward to the guaranty agency any payments subsequently received from or on behalf of the borrower.

(viii) The Secretary reimburses the guaranty agency for a disability claim paid to the lender after the agency pays the claim to the lender.

(ix) The guaranty agency must assign the loan to the Secretary after the guaranty agency pays the disability claim.

* * * * *

■ 24. Section 682.404 is amended by:

■ A. Adding new paragraph (g)(1)(ii)(E).

■ B. Revising paragraph (i).

The addition and revision read as follows:

§ 682.404 Federal reinsurance agreement.

* * * * *

(g) * * *

(1) * * *

(ii) * * *

(E) 16 percent of borrower payments received on or after October 1, 2007.

* * * * *

(i) *Account Maintenance Fee.* A guaranty agency is paid an account maintenance fee based on the original principal amount of outstanding FFEL Program loans insured by the agency. For fiscal years 1999 and 2000, the fee is 0.12 percent of the original principal amount of outstanding loans. For fiscal years 2000 through 2007, the fee is 0.10 percent of the original principal amount of outstanding loans. After fiscal year 2007, the fee is 0.06 percent of the original principal amount of outstanding loans.

* * * * *

■ 25. Section 682.406 is amended by adding new paragraph (d) to read as follows:

§ 682.406 Conditions for claim payments from the Federal Fund and for reinsurance coverage.

* * * * *

(d) A guaranty agency may not make a claim payment from the Federal Fund or receive a reinsurance payment on a loan if the agency determines or is notified by the Secretary that the lender offered or provided an improper inducement as described in paragraph (5)(i) of the definition of lender in § 682.200(b).

* * * * *

■ 26. Section 682.409 is amended by adding new paragraphs (c)(4)(vii) and (c)(4)(viii) to read as follows:

§ 682.409 Mandatory assignment by guaranty agencies of defaulted loans to the Secretary.

* * * * *

(c) * * *

(4) * * *

(vii) The record of the lender's disbursement of Stafford and PLUS loan funds to the school for delivery to the borrower.

(viii) If the MPN or promissory note was signed electronically, the name and location of the entity in possession of the original electronic MPN or promissory note.

* * * * *

■ 27. Section 682.411 is amended by revising paragraph (o) as follows:

§ 682.411 Lender due diligence in collecting guaranty agency loans.

* * * * *

(o) *Preemption.* The provisions of this section—

(1) Preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section; and

(2) Do not preempt provisions of the Fair Credit Reporting Act that provide relief to a borrower while the lender determines the legal enforceability of a loan when the lender receives a valid identity theft report or notification from a credit bureau that information furnished is a result of an alleged identity theft as defined in § 682.402(e)(14).

* * * * *

■ 28. Section 682.413 is amended by:

■ A. Adding new paragraph (h).

■ B. In the Note at the end of the section, removing the word ''Note'' and adding, in its place, the words ''Note to Section 682.413''.

The addition reads as follows:

§ 682.413 Remedial actions.

* * * * *

(h) In any action to require repayment of funds or to withhold funds from a guaranty agency, or to limit, suspend, or terminate a guaranty agency based on a violation of § 682.401(e), if the Secretary finds that the guaranty agency provided or offered the payments or activities listed in § 682.401(e)(1), the Secretary applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume. To reverse the presumption, the guaranty agency must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

* * * * *

■ 29. Section 682.414 is amended by:

■ A. Adding new paragraph (a)(5)(iv).

■ B. Adding new paragraph (a)(6).

■ C. Revising paragraph (b)(4).

The additions and revisions read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(5) * * *

(iv) If a lender made a loan based on an electronically signed MPN, the holder of the original electronically signed MPN must retain that original MPN for at least 3 years after all the loans made on the MPN have been satisfied.

(6)(i) Upon the Secretary's request with respect to a particular loan or loans assigned to the Secretary and evidenced by an electronically signed promissory note, the guaranty agency and the lender that created the original electronically signed promissory note must cooperate with the Secretary in all activities necessary to enforce the loan or loans. The guaranty agency or lender must provide—

(A) An affidavit or certification regarding the creation and maintenance of the electronic records of the loan or loans in a form appropriate to ensure admissibility of the loan records in a legal proceeding. This affidavit or certification may be executed in a single record for multiple loans provided that this record is reliably associated with the specific loans to which it pertains; and

(B) Testimony by an authorized official or employee of the guaranty agency or lender, if necessary to ensure admission of the electronic records of the loan or loans in the litigation or legal proceeding to enforce the loan or loans.

(ii) The affidavit or certification described in paragraph (a)(6)(i)(A) of this section must include, if requested by the Secretary—

(A) A description of the steps followed by a borrower to execute the promissory note (such as a flow chart);

(B) A copy of each screen as it would have appeared to the borrower of the loan or loans the Secretary is enforcing when the borrower signed the note electronically;

(C) A description of the field edits and other security measures used to ensure integrity of the data submitted to the originator electronically;

(D) A description of how the executed promissory note has been preserved to ensure that is has not been altered after it was executed;

(E) Documentation supporting the lender's authentication and electronic signature process; and

(F) All other documentary and technical evidence requested by the Secretary to support the validity or the authenticity of the electronically signed promissory note.

(iii) The Secretary may request a record, affidavit, certification or evidence under paragraph (a)(6) of this section as needed to resolve any factual dispute involving a loan that has been assigned to the Secretary including, but not limited to, a factual dispute raised in connection with litigation or any other legal proceeding, or as needed in connection with loans assigned to the Secretary that are included in a Title IV program audit sample, or for other similar purposes. The guaranty agency must respond to any request from the Secretary within 10 business days.

(iv) As long as any loan made to a borrower under a MPN created by the lender is not satisfied, the holder of the original electronically signed promissory note is responsible for ensuring that all parties entitled to access to the electronic loan record, including the guaranty agency and the Secretary, have full and complete access to the electronic record.

(b) * * *

(4) A report to the Secretary of the borrower's enrollment and loan status information, or any Title IV loan-related data required by the Secretary, by the deadline date established by the Secretary.

* * * * *

§ 682.415 [Removed and Reserved]

■ 30. Section 682.415 is removed and reserved.

■ 31. Section 682.602 is added to read as follows:

§ 682.602 Rules for a school or school-affiliated organization that makes or originates loans through an eligible lender trustee.

(a) A school or school-affiliated organization may not contract with an eligible lender to serve as trustee for the school or school-affiliated organization unless—

(1) The school or school-affiliated organization originated and continues or renews a contract made on or before September 30, 2006 with the eligible lender; and

(2) The eligible lender held at least one loan in trust on behalf of the school or school-affiliated organization on September 30, 2006.

(b) As of January 1, 2007, and for loans first disbursed on or after that date under a lender trustee arrangement that continues in effect after September 30, 2006—

(1) A school in a trustee arrangement or affiliated with an organization involved in a trustee arrangement to originate loans must comply with the requirements of § 682.601(a), except for paragraphs (a)(4), (a)(7), and (a)(9) of that section; and

(2) A school-affiliated organization involved in a trustee arrangement to make loans must comply with the requirements of § 682.601(a) except for paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), and (a)(9) of that section.

(Approved by the Office of Management and Budget under control number 1845–0020)

(Authority: 20 U.S.C. 1082, 1085)

■ 32. Section 682.603 is amended by:

■ A. In paragraph (a), at the end of the last sentence, removing the words "on the application by the student" and adding, in their place, the words "by the borrower and, in the case of a parent borrower of a PLUS loan, the student and the parent borrower".

■ B. In paragraph (b), removing the words "making application for the loan".

■ C. Redesignating paragraphs (d), (e), (f), (g), (h), and (i) as paragraphs (e), (f), (g), (h), (i), and (j), respectively.

■ D. Adding a new paragraph (d).

■ E. In the introductory language in newly redesignated paragraph (e), removing the words "application, or combination of loan applications," and adding, in their place, the words ", or a combination of loans,".

■ F. In newly redesignated paragraph (e)(2), adding the words "for the period of enrollment" after the word "attendance".

■ G. In newly redesignated paragraph (e)(2)(ii), adding the word "Subsidized" immediately before the word "Stafford" and removing the words "that is eligible for interest benefits'' immediately after the word ''loan''.

■ H. Revising newly redesignated paragraph (f).

■ I. In newly redesignated paragraph (g)(2)(i), removing the words '',not to exceed 12 months,''.

The addition and revision read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(d) Before certifying a PLUS loan application for a graduate or professional student borrower, the school must determine the borrower's eligibility for a Stafford loan. If the borrower is eligible for a Stafford loan but has not requested the maximum Stafford loan amount for which the borrower is eligible, the school must—

(1) Notify the graduate or professional student borrower of the maximum Stafford loan amount that he or she is eligible to receive and provide the borrower with a comparison of—

(i) The maximum interest rate for a Stafford loan and the maximum interest rate for a PLUS loan;

(ii) Periods when interest accrues on a Stafford loan and periods when interest accrues on a PLUS loan; and

(iii) The point at which a Stafford loan enters repayment and the point at which a PLUS loan enters repayment; and

(2) Give the graduate or professional student borrower the opportunity to request the maximum Stafford loan amount for which the borrower is eligible.

* * * * *

(f) In certifying loans, a school—

(1) May not refuse to certify, or delay certification, of a Stafford or PLUS loan based on the borrower's selection of a particular lender or guaranty agency;

(2) May not, for first-time borrowers, assign through award packaging or other methods, a borrower's loan to a particular lender;

(3) May refuse to certify a Stafford or PLUS loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the borrower in writing, provided that—

(i) The determination is made on a case-by-case basis; and

(ii) The documentation supporting the determination is retained in the student's file; and

(4) May not, under paragraph (f)(1), (2), and (3) of this section, engage in any pattern or practice that results in a denial of a borrower's access to FFEL loans because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, or selection of a particular lender or guaranty agency.

* * * * *

■ 33. Section 682.604 is amended by:

■ A. Revising paragraph (f)(1).

■ B. Redesignating paragraphs (f)(2), (f)(3), and (f)(4) as paragraphs (f)(5), (f)(6), and (f)(7), respectively.

■ C. Adding new paragraphs (f)(2), (f)(3), and (f)(4).

■ D. In newly redesignated paragraph (f)(5), removing the words ''The initial counseling must'' and adding, in their place, the words ''Initial counseling for Stafford Loan borrowers must''.

■ E. In newly redesignated paragraph (f)(5)(iv), removing the words, ''of a Stafford loan''.

■ F. In newly redesignated paragraph (f)(5)(v), adding the words '',or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained,'' immediately after the words ''Stafford loan borrowers''.

■ G. In paragraph (g)(2)(i), removing the words ''Stafford or SLS loans'' and adding, in their place, ''Stafford loans, or student borrowers who have obtained Stafford and PLUS loans, depending on the types of loans the student borrower has obtained,''.

The revision and additions read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(f) *Initial counseling.* (1) A school must ensure that initial counseling is conducted with each Stafford loan borrower prior to its release of the first disbursement, unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan. The initial counseling must—

(i) Explain the use of a Master Promissory Note;

(ii) Emphasize to the student borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, Federal offset, and litigation;

(iv) In the case of a student borrower (other than a borrower of a loan made or originated by the school), emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion of the program, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school; and

(v) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Stafford loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained at the same school or in the same program of study at the same school.

(2) A school must ensure that initial counseling is conducted with each graduate or professional student PLUS loan borrower prior to its release of the first disbursement, unless the student has received a prior Federal PLUS loan or Direct PLUS loan. The initial counseling must—

(i) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Stafford and PLUS loans, depending on the types of loans the borrower has obtained, at the same school or in the same program of study at the same school;

(ii) For a graduate or professional student who has received a prior Federal Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in § 682.603(d)(1)(i) through § 682.603(d)(1)(iii); and

(iii) For a graduate or professional student who has not received a prior Federal Stafford, or Direct subsidized or unsubsidized loan, provide the information specified in paragraph (f)(1)(i) through (f)(1)(iv) of this section.

(3) Initial counseling must be conducted either in person, by audiovisual presentation, or by interactive electronic means. If initial counseling is conducted through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

(4) A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, prior to releasing the proceeds of a loan in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials.

(5) A school must maintain documentation substantiating the

school's compliance with this section for each student borrower.

* * * * *

■ 34. Section 682.705 is amended by adding new paragraph (c) to read as follows:

§ 682.705 Suspension proceedings.

* * * * *

(c) In any action to suspend a lender based on a violation of the prohibitions in section 435(d)(5) of the Act, if the Secretary, the designated Department official, or hearing official finds that the lender provided or offered the payments or activities listed in paragraph (5)(i) of the definition of *lender* in § 682.200(b), the Secretary or the official applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans or to secure FFEL loan volume. To reverse the presumption, the lender must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

* * * * *

■ 35. Section 682.706 is amended by adding new paragraph (d) to read as follows:

§ 682.706 Limitation or termination proceedings.

* * * * *

(d) In any action to limit or terminate a lender's eligibility based on a violation of the prohibitions in section 435(d)(5) of the Act, if the Secretary, the designated Department official or hearing official finds that the lender provided or offered the payments or activities described in paragraph (5)(i) of the definition of *lender* in § 682.200(b), the Secretary or the official applies a rebuttable presumption that the payments or activities were offered or provided to secure applications for FFEL loans. To reverse the presumption, the lender must present evidence that the activities or payments were provided for a reason unrelated to securing applications for FFEL loans or securing FFEL loan volume.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 36. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a et seq., unless otherwise noted.

■ 37. Section 685.202 is amended by adding new paragraph (a)(1)(v) to read as follows:

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) * * *

(1) * * *

(v) For a subsidized Stafford loan made to an undergraduate student for which the first disbursement is made on or after:

(A) July 1, 2006 and before July 1, 2008, the interest rate is 6.8 percent on the unpaid principal balance of the loan.

(B) July 1, 2008 and before July 1, 2009, the interest rate is 6 percent on the unpaid principal balance of the loan.

(C) July 1, 2009 and before July 1, 2010, the interest rate is 5.6 percent on the unpaid principal balance of the loan.

(D) July 1, 2010 and before July 1, 2011, the interest rate is 4.5 percent on the unpaid principal balance of the loan.

(E) July 1, 2011 and before July 2012, the interest rate is 3.4 percent on the unpaid balance of the loan.

* * * * *

■ 38. Section 685.204 is amended by:

■ A. In paragraph (b), removing the parenthetical ''(f)'', and adding in its place, the parenthetical ''(g)''.

■ B. In paragraph (b)(1)(iii)(A), removing the words ''(b)(1)(i)'' and adding, in their place, the words ''(b)(1)(i)(A)''.

■ C. In paragraph (d)(1), removing the word ''the'' and adding, in its place, the word ''The''.

■ D. In paragraph (d)(2), removing the word ''the'' and adding, in its place, the word ''The''.

■ E. In paragraph (e)(1), removing the words ''first disbursed on or after July 1, 2001'' and removing the words ''not to exceed 3 years''.

■ F. Removing paragraph (e)(5).

■ G. Redesignating paragraphs (e)(2), (e)(3), and (e)(4), as paragraphs (e)(3), (e)(4), and (e)(5), respectively.

■ H. Adding a new paragraph (e)(2).

■ I. Redesignating paragraph (f) as paragraph (g).

■ J. Adding new paragraph (f).

■ K. Adding new paragraph (h).

The additions read as follows:

§ 685.204 Deferments.

* * * * *

(e) * * *

(2) The deferment period ends 180 days after the demobilization date for the service described in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

* * * * *

(f)(1) A borrower who receives a Direct Loan Program loan is entitled to receive a military active duty student deferment for 13 months following the conclusion of the borrower's active duty military service if—

(i) The borrower is a member of the National Guard or other reserve component of the Armed Forces of the United States or a member of such forces in retired status; and

(ii) The borrower was enrolled in a program of instruction at an eligible institution at the time, or within six months prior to the time, the borrower was called to active duty.

(2) As used in paragraph (f)(1) of this section, ''Active duty'' means active duty as defined in section 101(d)(1) of title 10, United States Code, except—

(i) Active duty includes active State duty for members of the National Guard; and

(ii) Active duty does not include active duty for training or attendance at a service school.

(3) If the borrower returns to enrolled student status during the 13-month deferment period, the deferment expires at the time the borrower returns to enrolled student status.

* * * * *

(h)(1) To receive a deferment, except as provided under paragraph (b)(1)(i)(A) of this section, the borrower must request the deferment and provide the Secretary with all information and documents required to establish eligibility for the deferment. In the case of a deferment granted under paragraph (e)(1) of this section, a borrower's representative may request the deferment and provide the required information and documents on behalf of the borrower.

(2) After receiving a borrower's written or verbal request, the Secretary may grant a deferment under paragraphs (b)(1)(i)(B), (b)(1)(i)(C), (b)(2)(i), (b)(3)(i), (e)(1), and (f)(1) of this section if the Secretary confirms that the borrower has received a deferment on a Perkins or FFEL Loan for the same reason and the same time period.

(3) The Secretary relies in good faith on the information obtained under paragraph (h)(2) of this section when determining a borrower's eligibility for a deferment, unless the Secretary, as of the date of the determination, has information indicating that the borrower does not qualify for the deferment. The Secretary resolves any discrepant information before granting a deferment under paragraph (h)(2) of this section.

(4) If the Secretary grants a deferment under paragraph (h)(2) of this section, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan.

(5) If the Secretary grants a military service deferment based on a request from a borrower's representative, the Secretary notifies the borrower that the deferment has been granted and that the borrower has the option to cancel the deferment and continue to make payments on the loan. The Secretary may also notify the borrower's representative of the outcome of the deferment request.

* * * * *

■ 39. Section 685.212 is amended by revising paragraph (a)(1) and (2) to read as follows:

§ 685.212 Discharge of a loan obligation.

(a) *Death.* (1) If a borrower (or a student on whose behalf a parent borrowed a Direct PLUS Loan) dies, the Secretary discharges the obligation of the borrower and any endorser to make any further payments on the loan based on an original or certified copy of the borrower's (or student's in the case of a Direct PLUS loan obtained by a parent borrower) death certificate, or an accurate and complete photocopy of the original or certified copy of the borrower's (or student's in the case of a Direct PLUS loan obtained by a parent borrower) death certificate.

(2) If an original or certified copy of the death certificate or an accurate and complete photocopy of the original or certified copy of the death certificate is not available, the Secretary discharges the loan only if other reliable documentation establishes, to the Secretary's satisfaction, that the borrower (or student) has died. The Secretary discharges a loan based on documentation other than an original or certified copy of the death certificate, or an accurate and complete photocopy of the original or certified copy of the death certificate only under exceptional circumstances and on a case-by-case basis.

* * * * *

■ 40. Section 685.213 is revised to read as follows:

§ 685.213 Total and permanent disability.

(a) *General.* A borrower's Direct Loan is discharged if the borrower becomes totally and permanently disabled, as defined in § 682.200(b), and satisfies the additional eligibility requirements contained in this section.

(b) *Discharge application process.* (1) To qualify for a discharge of a Direct Loan based on a total and permanent disability, a borrower must submit a discharge application to the Secretary on a form approved by the Secretary. The application must contain a certification by a physician, who is a doctor of medicine or osteopathy legally authorized to practice in a State, that the borrower is totally and permanently disabled as defined in § 682.200(b). The borrower must submit the application to the Secretary within 90 days of the date the physician certifies the application.

(2) Upon receipt of the borrower's application, the Secretary notifies the borrower that—

(i) No payments are due on the loan; and

(ii) The borrower, in order to remain eligible for the discharge from the date the physician completes and certifies the borrower's total and permanent disability on the application until the date the borrower receives a final disability discharge—

(*A*) Not receive annual earnings from employment that exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(*B*) Not receive a new loan under the Perkins, FFEL, or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans on which the borrower is seeking a discharge; and

(*C*) Must ensure that the full amount of any Title IV loan disbursement on any loan received prior to the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.

(c) *Initial determination of eligibility.* (1) If, after reviewing the borrower's application, the Secretary determines that the certification provided by the borrower supports the conclusion that the borrower meets the criteria for a total and permanent disability discharge, as defined in § 682.200(b), the borrower is considered totally and permanently disabled as of the date the physician completes and certifies the borrower's application.

(2) Upon making an initial determination that the borrower is totally and permanently disabled, as defined in § 682.200(b), the Secretary notifies the borrower that the loan will be in a conditional discharge status for a period of up to three years and that no payments are due on the loan. The notification to the borrower identifies the conditions of the conditional discharge period specified in paragraph (d)(1) of this section. The conditional discharge period begins on the date the physician certifies on the application that the borrower is totally and permanently disabled, as defined in § 682.200(b).

(3) If the Secretary determines that the certification provided by the borrower does not support the conclusion that the borrower meets the criteria for a total and permanent disability discharge in paragraph (d)(1) of this section, the Secretary notifies the borrower that the application for a disability discharge has been denied, and that the loan is due and payable to the Secretary under the terms of the promissory note.

(d) *Eligibility requirements for a total and permanent disability discharge.* (1) A borrower meets the eligibility requirements for a discharge of a loan based on total and permanent disability if, from the date the physician certified the borrower's discharge application, through the end of the three-year conditional discharge period—

(i) The borrower's annual earnings from employment do not exceed 100 percent of the poverty line for a family of two, as determined in accordance with the Community Service Block Grant Act;

(ii) The borrower does not receive a new loan under the Perkins, FFEL or Direct Loan programs, except for a FFEL or Direct Consolidation Loan that does not include any loans that are in a conditional discharge status; and

(iii) The borrower ensures that the full amount of any Title IV loan disbursement on any loan received prior to the date the physician completed and certified the application is returned to the holder within 120 days of the disbursement date.

(2) During the conditional discharge period, the borrower or, if applicable, the borrower's representative—

(i) Is not required to make any payments on the loan;

(ii) Is not considered delinquent or in default on the loan, unless the loan was past due or in default at the time the conditional discharge was granted;

(iii) Must promptly notify the Secretary of any changes in address or phone number;

(iv) Must promptly notify the Secretary if the borrower's annual earnings from employment exceed the amount specified in paragraph (d)(1)(i) of this section; and

(v) Must provide the Secretary, upon request, with additional documentation or information related to the borrower's eligibility for a discharge under this section.

(3) If the borrower satisfies the criteria for a total and permanent disability discharge during and at the end of the three-year conditional discharge period, the Secretary—

(i) Discharges the obligation of the borrower and any endorser to make any further payments on the loan at the end of that period; and

(ii) Returns any payments received after the date the physician completed and certified the borrower's loan discharge application to the person who made the payments on the loan.

(4) If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the borrower does not continue to meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional discharge period and resumes collection activity on the loan. The Secretary does not require the borrower to pay any interest that accrued on the loan from the date of the Secretary's initial eligibility determination described in paragraph (c)(2) of this section through the end of the conditional discharge period.

(5) The Secretary reserves the right to require the borrower to submit additional medical evidence if the Secretary determines that the borrower's application does not conclusively prove that the borrower is disabled. As part of this review or at any time during the application process or during or at the end of the conditional discharge period, the Secretary may arrange for an additional review of the borrower's condition by an independent physician at no expense to the applicant.

(Approved by the Office of Management and Budget under control number 1845–0021)

(Authority: 20 U.S.C. 1087a *et seq.*)

* * * * *

■ 41. Section 685.301 is amended by:

■ A. In paragraph (a)(1), removing the words ''in the application by the student'' and adding, in their place, the words, ''by the borrower and, in the case of a parent PLUS loan borrower, the student and the parent borrower.''

■ B. Redesignating paragraphs (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) as (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), and (a)(10), respectively.

■ C. Adding new paragraph (a)(3).

■ D. Revising newly redesignated paragraph (a)(10)(ii)(A).

The addition and revisions read as follows:

§ 685.301 Determining eligibility and loan amount.

(a) * * *

(3) Before originating a Direct PLUS Loan for a graduate or professional student borrower, the school must determine the borrower's eligibility for a Direct Subsidized and a Direct Unsubsidized Loan. If the borrower is eligible for a Direct Subsidized or Direct Unsubsidized Loan, but has not requested the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible, the school must—

(i) Notify the graduate or professional student borrower of the maximum Direct Subsidized or Direct Unsubsidized Loan amount that he or she is eligible to receive and provide the borrower with a comparison of—

(A) The maximum interest rate for a Direct Subsidized Loan and a Direct Unsubsidized Loan and the maximum interest rate for a Direct PLUS Loan;

(B) Periods when interest accrues on a Direct Subsidized Loan and a Direct Unsubsidized Loan, and periods when interest accrues on a Direct PLUS Loan; and

(C) The point at which a Direct Subsidized Loan and a Direct Unsubsidized Loan enters repayment, and the point at which a Direct PLUS Loan enters repayment; and

(ii) Give the graduate or professional student borrower the opportunity to request the maximum Direct Subsidized or Direct Unsubsidized Loan amount for which the borrower is eligible.

* * * * *

(10) * * *

(ii) * * *

(A) Generally an academic year, as defined by the school in accordance with 34 CFR 668.3, except that the school may use a longer period of time corresponding to the period to which the school applies the annual loan limits under § 685.203; or

* * * * *

■ 42. Section 685.304 is amended by:

■ A. In paragraph (a)(1) removing the words ''(a)(4)'' and adding, in their place, the words ''(a)(5)''.

■ B. Redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) as paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7), respectively.

■ C. Adding a new paragraph (a)(2).

■ D. In newly redesignated paragraph (a)(4) removing the words ''The initial counseling must'' and adding, in their place, the words ''Initial counseling for Direct Subsidized Loan and Direct Unsubsidized Loan borrowers must''.

■ E. In newly redesignated paragraph (a)(4)(iv) removing the words ''Direct Unsubsidized Loan borrowers'' and adding, in their place, the words ''Direct Unsubsidized Loan borrowers, or student borrowers with Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the borrower has obtained,''.

■ F. In newly redesignated paragraph (a)(5), removing the words ''(a)(1)–(3)'' and adding, in their place, the words ''(a)(1)–(4)''.

■ G. In newly redesignated paragraph (a)(5)(i), removing the words ''(a)(1)'' and adding, in their place, the words ''(a)(1) or (a)(2)'', and removing the words ''(a)(3)'' and adding in their place the words ''(a)(4)''.

■ H. In paragraph (b)(4)(i), removing the words ''Direct Subsidized Loan and Direct Unsubsidized Loan borrowers'' and adding, in their place, the words ''student borrowers who have obtained Direct Subsidized Loans and Direct Unsubsidized Loans, or student borrowers who have obtained Direct Subsidized, Direct Unsubsidized, and Direct PLUS Loans, depending on the types of loans the student borrower has obtained, for attendance''.

The addition reads as follows:

§ 685.304 Counseling borrowers.

(a) * * *

(2) Except as provided in paragraph (a)(5) of this section, a school must ensure that initial counseling is conducted with each graduate or professional student Direct PLUS Loan borrower prior to making the first disbursement of the loan unless the student borrower has received a prior Direct PLUS Loan or Federal PLUS Loan. The initial counseling must—

(i) Inform the student borrower of sample monthly repayment amounts based on a range of student levels or indebtedness or on the average indebtedness of graduate or professional student PLUS loan borrowers, or student borrowers with Direct PLUS Loans and Direct Subsidized Loans or Direct Unsubsidized Loans, depending on the types of loans the borrower has obtained, at the same school or in the same program of study at the same school;

(ii) For a graduate or professional student who has received a prior Federal Stafford, or Direct Subsidized or Unsubsidized Loan provide the information specified in § 685.301(a)(3)(i)(A) through § 685.301(a)(3)(i)(C); and

(iii) For a graduate or professional student who has not received a prior Federal Stafford, or Direct Subsidized or Direct Unsubsidized Loan, provide the information specified in paragraph (a)(4)(i) through (a)(4)(iii) and paragraph (a)(4)(v) of this section.

* * * * *

[FR Doc. 07–5332 Filed 10–31–07; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday,

November 1, 2007

Part III

Department of Education

34 CFR Parts 668, 674, 676 et al.

Federal Student Aid Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 676, 682, 685, 690, and 691

[Docket ID ED–2007–OPE–0134]

RIN 1840–AC91

Federal Student Aid Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations on the Student Assistance General Provisions; Federal Perkins Loan (Perkins Loan) Program; Federal Supplemental Educational Opportunity Grant (FSEOG) Program; Federal Family Education Loan (FFEL) Program; William D. Ford Federal Direct Loan (Direct Loan) Program; Federal Pell Grant (Pell Grant) Program; Academic Competitiveness Grant (ACG) Program; and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program. The regulations reduce administrative burden for program participants, provide benefits to students and borrowers, and protect taxpayers' interests.

DATES: *Effective Date:* These regulations are effective July 1, 2008.

Implementation Date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1089(c)(2)(A)), that institutions, lenders, guaranty agencies, and loan servicers that administer Title IV, HEA programs may, at their discretion, choose to implement all provisions of these final regulations on or after November 1, 2007. For further information, see the section entitled Implementation Date of These Regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: Michelle Belton, U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006–8502. Telephone: (202) 502–7821 or via the Internet at: *Michelle.Belton@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION: On August 8, 2007, the Secretary published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions, Perkins Loan Program, FSEOG Program, FFEL Program, Direct Loan Program, Pell Grant Program, ACG Program, and National SMART Grant Program in the **Federal Register** (72 FR 44620).

In the preamble to the NPRM, the Secretary discussed on pages 44621 through 44635 the major changes proposed in that document to strengthen and improve the administration of the Federal student financial aid programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). These include the following:

- Amending § 668.2 to add a definition for ''professional degree'' and to harmonize and consolidate definitions for ''full-time student,'' ''graduate or professional student,'' ''half-time student,'' ''three-quarter time student,'' and ''undergraduate student.''
- Amending §§ 668.4, 668.22, 668.164, 682.200, 682.604, and 685.301 to align disbursements, with a few exceptions, for all Title IV grant and loan programs on a payment period basis.
- Amending § 668.10 to define ''independent study'' as a course of study with predefined objectives where a student works with a faculty member to decide how those objectives will be met.
- Amending §§ 668.21, 682.604, and 685.303 to consolidate all requirements addressing the treatment of Title IV funds (except Federal Work Study) when a student does not begin attendance in a payment period or period of enrollment by moving the requirements for FFEL and Direct Loan funds from §§ 682.604 and 685.303, respectively, to § 668.21.
- Amending § 668.22 to allow institutions to make a direct disbursement of any Title IV grant funds that make up a post-withdrawal disbursement without notifying a student and obtaining the student's permission.
- Amending § 668.164 to establish timeframes for returning Title IV, HEA program funds that an institution attempts to disburse directly to a student or parent, but the student or parent does not receive or negotiate those funds.
- Amending § 668.164 to allow institutions to pay for prior-year charges of up to $200.
- Amending § 668.164(c) to modify the provisions for issuing a check and add new provisions expanding the use of electronic funds transfers (EFTs) to bank accounts that underlie stored-value cards and other transaction devices.
- Amending § 668.164(g) to extend the period within which an institution is allowed to make a late disbursement from 120 to 180 days and to eliminate an institution's ability to request funds after that period expires.
- Amending § 668.165(a) to require institutions to either obtain affirmative confirmation from a student prior to disbursing a loan or notify a student no earlier than 30 days before, but no later than seven days after crediting a student's account with loan proceeds, and give students 30 days to cancel all or a portion of the loan.
- Amending § 668.166 to expand the definition of excess cash to include Title IV, HEA program funds received from the Secretary that are deposited or transferred into the institution's Federal bank account as a result of an award cancellation, adjustment, or recovery; to eliminate the three percent excess cash tolerance option; and to simplify the provisions addressing the consequences for maintaining excess cash.
- Amending §§ 674.16 and 676.16 to eliminate the single disbursement provisions that currently exist in the Perkins Loan and FSEOG programs.
- Amending §§ 682.603 and 685.301 to allow institutions that use credit hours with terms that are at least nine weeks and substantially equal in length to make a full loan for a single term; and to allow institutions that use credit hours without terms or without terms that are substantially equal in length with no term less than nine weeks in length, or that use clock hours to certify a loan for the remaining balance of the student's annual loan limit for the remaining portion of a program for a transfer student or a student who has completed one degree and will immediately begin another degree at the same institution.
- Amending §§ 682.603 and 685.301 to allow students to progress to the next annual loan limit if they complete an academic year in calendar time in a nonstandard term credit hour program if the terms in that program are substantially equal in length and are at least nine weeks in length.
- Amending §§ 690.63 and 690.66 to allow institutions that offer programs with semesters, trimesters, or quarters and have terms for different cohorts of students that start periodically to use the same Pell formula as that used for traditional programs; to amend the Pell calculation for programs using clock hours or credit hours without terms; and to adjust the Pell calculation for correspondence study programs.

Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the Title IV, HEA programs, the Secretary is using the authority granted her under section 482(c) to designate all of the regulations included in this document for early implementation at the discretion of each institution, lender, guaranty agency, or servicer, as appropriate.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 8, 2007, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 7, and in response to the Secretary's invitation, 22 parties submitted comments on the proposed regulations. An analysis of the comments and the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not respond to technical and other minor changes—and suggested changes the law does not authorize the Secretary to make. We also do not respond to comments pertaining to issues that were not within the scope of the NPRM.

General Definitions (§ 668.2)

Comments: In general, commenters supported the proposed changes in § 668.2. With regard to the definition of ''full-time student,'' one commenter requested that the Department not increase the number of clock hours required to be considered full-time as that would affect the amount of time a student must be enrolled to be considered part-time.

Discussion: These regulations do not include any provisions that increase the number of clock hours required for full-time students. The Department originally considered changing the number of clock hours required for a student to be considered a full-time student, but withdrew this proposal during the negotiated rulemaking sessions because this change could unfavorably affect part-time clock hour students.

Change: None.

Comments: We received comments from two institutions regarding the definitions of ''graduate or professional student'' and ''undergraduate student'' and the clarification of when a student is considered an undergraduate in a dual degree program. One of the commenters noted that this clarification is welcomed in light of the fact that ''there has been considerable growth in such programs, often co-mingling undergraduate coursework, making it difficult to determine exact eligibility for Title IV aid. By considering such students to be undergraduates for the first three years of the academic program, this confusion will be greatly reduced.'' The other commenter agreed with this regulatory change but only if institutions are allowed to use their own definition of academic year when determining the ''third year.''

Discussion: The term ''academic year'' is defined in section 481 of the HEA. Generally, institutions that participate in the Title IV, HEA programs and measure their program length in credit hours are required to define their academic year as at least 30 weeks of instructional time during which a full-time student in an undergraduate program is expected to complete at least 24 semester or trimester credit hours or 36 quarter credit hours of study. Institutions that participate in the Title IV, HEA programs and measure their program length in clock hours are required to define their academic year as at least 26 weeks of instructional time during which a full-time student in an undergraduate program is expected to complete at least 900 clock hours. However, the statutory purpose behind the definition of an academic year is to determine the minimum period of time for which we will pay a student an academic year's worth of financial aid. Determining ''grade level'' for the purpose of categorizing a student as either a graduate or professional student or an undergraduate student is not related to the issue the HEA addresses with the definition of an academic year. Therefore, we agree with the commenter who suggested that an institution can, without reference to the statutory definition of an academic year, define what a year is in its programs for purposes of determining when a student is an undergraduate student or a graduate or professional student.

Change: The definition of ''graduate or professional student'' in § 668.2 is amended by using the term ''year'' instead of ''academic year'' in paragraph (3). In addition, the definition of ''undergraduate student'' in § 668.2 is similarly amended by using the term ''year'' instead of ''academic year'' in those places that describe the length of a course of study or a program.

Comment: We received one comment requesting the Department to consider altering the definitions for ''graduate or professional student'' and ''undergraduate student'' to reflect the language that is currently used in the Department's Federal Student Aid (FSA) Handbook for consistency and clarity. In particular, the commenter asked the Department to (1) consider adopting the definition for an ''undergraduate student'' as it appears in the handbook, (2) use the term ''program'' consistently throughout the regulations, (3) change the term ''institution of higher education'' to ''eligible institution'' since the term ''institution of higher education'' is defined in the regulations to exclude proprietary institutions, (4) drop the word ''first'' in the phrases ''first professional degree'' and ''first degree at the baccalaureate level,'' and (5) use the term ''mixed-degree programs'' rather than ''dual degree programs.''

Discussion: The definition of an ''undergraduate student'' in the FSA Handbook is ''a student who is enrolled in a program of study that usually does not exceed four (and can be up to five) academic years in length and that is designed to lead to a degree or certificate at or below the baccalaureate level.'' While this definition is correct, it does not address certain student eligibility or program specific requirements that are covered in the more comprehensive definition in § 668.2. The definition of ''undergraduate student'' in § 668.2, which contains definitions that are relevant to all of the Title IV, HEA programs, was intended to incorporate requirements from the definition of ''undergraduate student'' currently in different program regulations. However, in proposing the definition of ''undergraduate student,'' we inadvertently omitted certain provisions currently in §§ 674.2, 675.2, and 676.2. Specifically, these sections describe an undergraduate student as a student enrolled in a course of study that usually does not exceed four years, or is enrolled in a four or five year program designed to lead to a degree. A student enrolled in a program of any longer period is considered an undergraduate student for only the first four years of that program.

The HEA refers to a student following a course of study, while institutions offer programs. A course of study refers to a student's particular academic path in a program. For example, a student's major would be considered a course of study. Program, as it appears in the HEA, refers to the overall bachelor's program, which includes not only the course of study but also any other general coursework that may be required by an institution.

We understand the commenter's concerns that the term ''institution of higher education,'' as defined in the regulations, appears to exclude proprietary institutions. Additionally, this term is not used in the definition of undergraduate student. Therefore, to address the commenter's concerns and for consistency, we are removing the reference to an institution of higher education in the definition of graduate or professional student.

We agree with the commenter's point regarding the use of the term ''first degree at the baccalaureate level'' in paragraph (1) of the definition for ''undergraduate student'' and the term ''first professional degree.'' Because a student can be considered an undergraduate student when taking courses below the baccalaureate level even after receiving a bachelor's degree for purposes of the FFEL, Direct Loan, and Perkins Loan programs, the term ''first degree at the baccalaureate level'' in paragraph (1) will be amended. It is not necessary to specify whether a professional degree is a first professional degree for Title IV, HEA program purposes and, therefore, we will amend the definitions for ''graduate or professional student'' and ''undergraduate student.'' We will also amend the term ''first professional degree'' to ''professional degree'' to clarify the Department's intention when using this term in the regulations.

Finally, we believe the term ''dual degree programs'' is commonly used in the academic community. It is more descriptive of the types of programs to which the definitions apply and is less confusing than the term ''mixed degree programs.''

Changes: Section 668.2 is amended by removing the word ''first'' in paragraphs (1), (2), and (3) of the definition for an ''undergraduate student'' and from paragraph (2) of the definition for ''graduate or professional student.'' Section 668.2 is further amended by removing the term ''institution of higher education'' from the definition of a ''graduate or professional student'' and by removing the word ''first'' from the term ''first professional degree.'' In addition, the definition of ''undergraduate student'' is amended to reflect the omitted provisions in §§ 674.2, 675.2, and 676.2.

Payment Periods (§§ 668.4, 668.22, 668.164, 682.200, 682.604, and 685.301)

Comments: One commenter believed that the regulatory provisions allowing an institution to disburse Title IV grant funds at such times and in such installments in each payment period as the institution determines best meets the student's needs should also apply to the disbursement of FFEL and Direct Loan funds. Along these lines, the commenter asked the Department to clarify that an institution may delay the disbursement of an FFEL or Direct Loan until after the 60 percent point in the payment period, or pay in two substantially equal installments that coincide with the beginning dates of two consecutive modules that the student is scheduled to attend within a standard term.

Discussion: Nothing in the HEA or the regulations prohibits an institution from paying an FFEL or Direct Loan in installments during a payment period, provided that the disbursements are substantially equal and that no more than half of the loan amount for the period of enrollment is disbursed to the borrower prior to the mid-point of the period of enrollment. However, for an FFEL loan, an institution should confer with the lender or guaranty agency to confirm that they would permit such disbursements. For a Direct Loan, an institution may make such disbursements at the institution's discretion and does not need to contact the Department. The Department notes that the provisions allowing an institution to pay a student at such times and in such amounts as it determines best meet the student's needs also applies to Perkins Loan funds.

The purpose of the provisions allowing an institution to disburse Title IV funds in installments within a payment period is to give institutions the ability to apportion the payment if doing so will be in the best interest of the student. For example, if a payment period is particularly long, an institution might choose to pay in multiple installments to ensure that a student will have funds to pay rent later in the payment period. However, as a general matter, Title IV funds must be provided to students in a timely manner to best assist them in paying their educational expenses. Consequently, an institution may not delay the disbursement of funds until after the 60 percent point, for example, to avoid the administrative burden of performing a Return of Title IV Funds calculation and the requirements that go along with it, or to prevent the student from having to return funds upon withdrawal.

Change: Section 668.164(b)(1)(ii) is amended to make clear that an institution may disburse Perkins Loan funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

Comments: One commenter asked the Department to clarify any difference between the term ''successfully completes'' as defined in the NPRM for completion of a payment period in certain types of educational programs, and the term ''successfully completed'' as used in the late disbursement provisions under § 668.164(g)(4)(ii). The commenter believes that the provision for making a late disbursement, which provides that an institution may not make a second or subsequent late disbursement of FFEL or Direct Loan funds unless the student successfully completed the period of enrollment for which the loan was intended, does not require the student to have passed the coursework associated with the hours in the period of enrollment. Two commenters suggested that the Secretary define ''standard terms,'' ''nonstandard terms,'' and ''substantially equal in length'' in the General Provisions Regulations under § 668.2 so that these terms would apply to all of the Title IV programs.

Discussion: The term ''successfully completes,'' or a variation of that term, has the same meaning for payment period purposes as it does for making late disbursements, i.e., the institution must consider the student to have passed the coursework associated with the hours in the payment period or period of enrollment.

A standard term, as specifically noted in, for example, §§ 668.22(a)(ii)(5) and 690.63(a)(1), is a semester, trimester, or quarter. By inference, a nonstandard term is something other than that. The Department does not believe it is necessary to add definitions of ''standard terms'' and ''nonstandard terms'' in regulations that go beyond these general concepts. The only places the term ''substantially equal in length'' is used outside of the FFEL and Direct Loan regulations are where it is specifically needed in §§ 668.4 and 668.22 of the General Provisions regulations. The Department believes it is necessary to define the term in those two sections only. Therefore, we are adding in these final regulations in § 668.2 the same definition of ''substantially equal in length'' that we are adding in § 668.4.

Change: Section 668.22(l) is amended to include a definition of the term ''substantially equal in length.''

Transferring to a New Program at the Same Institution (§ 668.4)

Comments: One commenter asked whether the proposed regulations allowing a student to be considered to remain in the same payment period when the student transfers into a second program would apply when the student transfers from a Business program to an Information Technology (IT) program at the same institution. In this case, the student is continuously enrolled, the payment periods are substantially equal in length, and the charges are the same, but the credits from the Business program that the student took in that payment period do not transfer to the IT program.

Discussion: The Department's response, based on these facts, is no. We intend that § 668.4(g) will address those cases where there is very little change to a student's academic circumstances and the student is changing over to the new program in a nearly seamless manner. In the commenter's case, the coursework in the payment period the student is transferring out of would not be considered to be substantially similar to the coursework the student will be taking in the new program because none of the credits associated with that coursework transfer over to the new program. Therefore, the institution must treat the student as a withdrawal from the Business program, and calculate new payment periods for the student's enrollment in the IT program. Based on this comment, the Department believes that it would be beneficial to clarify § 668.4(g).

Changes: Section 668.4(g)(3) is amended to clarify that for an institution to consider the student to remain in the same payment period the credits from the payment period the student is transferring out of must be accepted toward the new program.

Return of Title IV Funds Calculated on a Payment Period Basis (§§ 668.4 and 668.22)

Comment: One commenter did not agree with the proposed change that would require the use of the payment period that ends later for Return of Title IV Funds calculations for a student who withdrew from a credit hour program that is measured in nonstandard terms that are not substantially equal in length, when the student received aid under both payment period definitions—one for Title IV grant and Perkins Loan funds, and one for FFEL and Direct Loan funds. The commenter noted that a student who received aid under both payment period definitions would earn a different percentage of aid than a student with the same withdrawal date who received aid under only the shorter of the two payment periods. The commenter felt that students with the same withdrawal date should always earn the same percentage of aid, irrespective of the type of programs from which the student receives aid.

Discussion: As stated in the NPRM (72 FR 44626), to simplify the Return of Title IV Funds calculation and ease administrative burden, we believe that institutions should use consistent Title IV payment periods to the extent permitted under the HEA and regulations. However, as there are two payment period definitions to take into account for nonstandard term credit hour programs with terms that are not substantially equal in length, the Department sought a solution that is as equitable as possible without being exceedingly complicated. Although, as the commenter points out, a student who received aid under both payment period definitions would earn a different percentage of aid than a student with the same withdrawal date who received aid under only the shorter of the two payment periods, we believe the approach taken in these regulations is the best solution because the use of the shorter payment period would be substantially more complicated.

Change: None.

Treatment of Title IV Grant and Loan Funds if a Recipient Does Not Begin Attendance (§§ 668.21, 682.604, and 685.303)

Comments: Three commenters supported the proposed regulations consolidating the requirements for the treatment of Title IV funds when a student does not begin attendance. However, two other commenters felt that the proposed requirement that an institution return the amount of FFEL and Direct Loan funds paid to the institution on behalf of the student was new and did not reflect current regulations.

Two commenters suggested that regulatory language be added to reflect the statements in the preamble to the NPRM that (1) institutions would not be responsible for returning FFEL and Direct Loan funds that are disbursed directly to the student by the lender for a study-abroad program or for a student enrolled in a foreign school, and (2) a final demand letter must be issued to these students for such funds.

One commenter believed that the timeframe for an institution to return Title IV funds should be as soon as possible, but no later than 45 days after the date that the institution becomes aware that the student will not or has not begun attendance, rather than the proposed 30 days, to match the timeframe in § 668.22 for an institutional return of funds to the Title IV programs when a student withdraws.

Discussion: The Department notes that although the proposed requirements in §§ 682.604(d)(4)(ii) and 685.303(b)(3)(ii) did not specifically state that FFEL and Direct Loan funds paid to the institution on behalf of a student (i.e., parent PLUS loan funds) must be returned by the institution, the Department has previously interpreted the requirement that the institution return funds paid by the student to include parent PLUS loan funds. By including the phrase ''on behalf of'' in § 668.21 we intended to reflect this longstanding interpretation in the regulations.

We agree with the commenters' suggestions to add regulatory language to address the treatment of FFEL and Direct Loan funds disbursed directly to the student by the lender for a study-abroad program or for a student enrolled in a foreign school when the student does not begin attendance.

As stated in the NPRM (72 FR 44628), the Department does not believe that an additional 15 days in the timeframe are necessary because, unlike the Return of Title IV Funds requirements in § 668.22, no calculation is required to determine the amount of funds an institution must return.

Changes: Section 668.21(a)(2)(ii) is amended to make clear that an institution is not responsible for returning FFEL and Direct Loan funds that are disbursed directly to the student by the lender for a study-abroad program or for a student enrolled in a foreign school when the student does not begin attendance. In addition, § 668.21(a)(2)(ii) states that a final demand letter must be issued to students for such funds.

Post-Withdrawal Disbursements of Grant Funds Made Directly to a Student (§ 668.22)

Comments: Four commenters agreed with the proposal to remove the requirement that an institution notify and obtain the student's permission prior to making a direct disbursement of any Title IV grant funds that make up a post-withdrawal disbursement. One commenter believed the change would help streamline part of a complicated administrative process. However, one commenter urged the Department to establish one timeframe for late disbursements, disbursements of Title IV grant funds that make up a post-withdrawal disbursement, and post-withdrawal disbursements of Title IV loan funds. Two commenters believed that an institution should be required to make a direct disbursement of Title IV grant funds that make up a post-withdrawal disbursement as soon as possible, but no later than 180 days after the date of the institution's determination that the student withdrew, rather than the proposed 30 days, to match the proposed timeframe for making a late disbursement. One commenter felt that an institution should be required to make such a disbursement as soon as possible, but no later than 45 days after the date of the institution's determination that the student withdrew, rather than the proposed 30 days, to match the timeframe for an institutional return of funds to the Title IV programs when a student withdraws. The commenter stated that most institutions are looking at this process at the same time a Return of Title IV Funds calculation is being done, so the timeframe should be the same. Four commenters felt that the requirement for making a post-withdrawal disbursement of Title IV loan funds should be changed to as soon as possible, but no later than 180 days after the date of the institution's determination that the student withdrew, rather than the existing 120 days, to match the proposed timeframe for making a late disbursement. Another commenter asked if it was permissible for an institution not to issue the direct disbursement of Title IV grant funds that make up a post-withdrawal disbursement if a student should wish not to receive it. The commenter noted that some students who plan to transfer to another institution may wish to use their Title IV grant eligibility at the new institution.

Discussion: Although the Secretary believes that, in the vast majority of cases, an institution will not need 45 days from the date it determines that a student withdrew to make a direct disbursement of Title IV grant funds to a student as a post-withdrawal disbursement, the Secretary agrees with the comment that making the timeframe consistent with the 45-day timeframe for the payment of an institutional return of unearned Title IV funds will give institutions one less timeframe to take into account. For the same reason, the Secretary agrees with the comment that the requirement for making a post-withdrawal disbursement of Title IV loan funds should be changed to ''as soon as possible, but no later than 180 days after the date of the institution's determination that the student withdrew'' to match the timeframe for making a late disbursement. These funds are intended to cover educational expenses that have already occurred and must be provided to the student in a timely manner.

The Secretary does not agree with the suggestion that an institution should have 180 days to make a direct disbursement of Title IV grant funds to a student as a post-withdrawal disbursement. Additional time is provided for an institution to make a post-withdrawal disbursement of loan funds to allow for the required notification to the student, or parent in the case of a PLUS loan, and to receive a response. The Secretary emphasizes that an institution must return or disburse funds as soon as possible after determining that a student has withdrawn.

An institution must be able to document that its procedures call for it to get post-withdrawal disbursements to its students as soon as possible, and that it is consistently following those procedures.

These regulations require an institution to disburse directly to a student, as soon as possible, but no later than 45 days after the date of the institution's determination that the student withdrew, any amount of a post-withdrawal disbursement of grant funds that is not credited to the student's account. An institution may not delay its disbursement processes in order to ascertain whether a student wishes to receive the grant funds to which the student is entitled. However, while the institution is processing the disbursement it may, at its discretion, notify the student that it may be beneficial to turn down all or a portion of the grant funds to preserve the student's grant eligibility for attendance at another institution. Of course, if a student independently contacts the institution and declines receipt of a grant disbursement, the institution is not required to make the disbursement.

Changes: Section 668.22(a)(5)(ii)(B)(*1*) is changed to require an institution to make a direct disbursement of Title IV grant funds to a student as a post-withdrawal disbursement as soon as possible, but no later than 45 days after the date it determines that a student withdrew.

Section 668.22(a)(5)(iii)(C) is changed to require that, after receiving confirmation that a student, or parent in the case of a PLUS loan, wants a post-withdrawal disbursement of Title IV loan funds credited to the student's account or disbursed directly, an institution must make a post-withdrawal disbursement of Title IV loan funds as soon as possible, but no later than 180 days after the date of the institution's determination that the student withdrew.

Cash Management—Recovery of Unclaimed Title IV Funds (§ 668.164(h))

Comments: With regard to returning Title IV funds for a check that is not cashed, one commenter asked the Department to clarify (1) how this provision applies to Federal Work-Study (FWS) payroll checks and (2) the timeframes and processes for handling FWS funds. Another commenter from an institution suggested a one-year timeframe for resolving issues with unclaimed funds to coincide with the institution's business practice for reviewing, recovering, and returning Title IV funds.

Discussion: The Department agrees that it would be helpful to clarify how § 668.164(h) applies to FWS funds. The timeframes and processes for returning FWS funds are the same as those for other Title IV funds. However, the FWS funds that must be returned consist of only the Federal share of the student's payroll check or EFT payment.

With respect to the comment suggesting that we extend to one year the timeframe for returning unclaimed funds, we continue to believe that the Federal interest is better protected and the benefits to the student are greater (the student's loan balance is reduced) when the uncashed checks or undeliverable Title IV payments are returned to the Secretary or FFEL Program lender sooner rather than later.

Changes: The regulations in § 668.164(h) are amended (1) to more clearly articulate the timeframes and processes for returning Title IV funds and (2) to specify that only the Federal share of FWS funds must be returned to the Secretary.

Cash Management—Minor Prior-Year Charges (§ 668.164(d))

Comments: Commenters generally agreed with the proposal to increase from $100 to $200 the amount of prior-year charges that may be paid with current-year funds. A few commenters suggested keeping the current provision that allows an institution to pay for more than $100 (or $200 under the proposed regulations) of prior-year charges if this payment will not prevent the student from paying current educational costs. One of these commenters reasoned that as a student progresses through grade levels the combination of increases in the student's loan amount and the availability of ACG and SMART funds would enable the student to pay for both current-year and prior-year charges out of current-year funds. The commenter suggested that in this situation using the student's credit balance to pay for any prior-year charges would be more beneficial to the student than issuing the credit balance to the student.

Discussion: As discussed in the preamble to the NPRM (72 FR 44629), the HEA provides that Title IV funds that a student is eligible to receive for an award year are intended to be used for that award year. The Department originally promulgated regulations allowing the use of current year Title IV funds to pay for minor prior-year charges strictly as an administrative convenience, not as a way for an institution to circumvent the law by maximizing a student's current-year awards to pay for accumulated prior-year balances. In exchange for increasing from $100 to $200 the amount of minor prior-year charges that may be paid with current-year funds, the negotiated rulemaking committee agreed to remove the exception that allowed an institution to pay for more prior-year charges under certain circumstances.

Change: None.

Cash Management—Electronic Disbursements of Title IV Funds (§ 668.164(c))

Comment: A commenter suggested expanding the proposed definition of ''bank account'' in § 668.164(c)(2) to include accounts at credit unions that are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Discussion: We agree. NCUSIF is an arm of the National Credit Union Administration (NCUA), which is the independent Federal agency that charters and supervises Federal credit unions. NCUA, backed by the full faith and credit of the U.S. government, operates the NCUSIF.

Changes: The definition of ''bank account'' in § 668.164(c)(2) is amended to include accounts insured by the NCUSIF.

Comment: One commenter suggested extending from 21 to at least 45 days the period during which a student could pick up a check at the institution. The commenter stated that institutions frequently have outdated addresses for students and that providing more time for students either to pick up checks or to arrange another method of disbursement would be preferable to returning student checks. The commenter also suggested that direct payments of less than $100 be exempt from the check-mailing requirement.

Discussion: As mentioned in the preamble to the NPRM (72 FR 44630), the cases underlying this proposed provision were ones in which an institution would notify a student that a credit-balance check was available for immediate pick-up, but there was no check produced by the institution. Instead, the student would be directed to a Web site where the student would choose to receive the credit balance in one of three ways: (1) By an EFT to the student's bank account, (2) by an EFT to a bank account opened on behalf of the student by the institution, or (3) by a check. We have no issue with an institution asking a student to go to a Web site to make a disbursement selection as long as the institution pays any credit balance to the student within the 14-day regulatory timeframes regardless of whether the student makes a selection, chooses not to, or simply neglects to make one. However, we are concerned that an institution might request and receive Title IV funds and credit the student's account, but not pay the credit balance because the student did not make a disbursement selection. The Department emphasizes that it is the sole responsibility of the institution to make a timely credit balance payment to a student. This provision ensures that an institution produces a check that a student may pick up at a specified location at the institution. If the student does not pick up the check within 21 days, the institution must mail it to the student, disburse the credit balance to the student in some other way, or immediately return the credit-balance funds.

With respect to the comment about exempting direct payments of less than $100 from the check-mailing requirement, the commenter did not provide, and we do not see, any basis for an exemption.

Change: None.

Comment: One commenter recommended amending the proposed provision in § 668.164(c)(3) under which an institution must obtain written affirmative consent from a student or parent to open a bank account by permitting the institution to obtain the student's or parent's consent in accordance with the Electronic Signatures in the Global and National Commerce Act (E-Sign Act).

Discussion: An institution must comply with the provisions of the E-Sign Act irrespective of whether those provisions are referenced in these Title IV regulations. The negotiated rulemaking committee agreed to include a simple but specific consent requirement in the regulations instead of relying solely on the E-Sign Act, which may be interpreted and implemented in different ways.

Change: None.

Comment: One commenter suggested two changes to the proposed provision under which an institution must ensure that a student has convenient access to branch offices of the bank or ATMs of the bank or affiliated bank for the purpose of making free cash withdrawals. First, the commenter recommended that the term ''affiliated'' be defined to mean a bank under the same common ownership and control as the bank in which the account was opened. Second, the commenter suggested defining the term ''convenient access'' to require that a branch office or ATM of the bank in which the account was opened be located within 10 miles of the main campus of an institution, except for students enrolled in a distance education program offered by the institution.

Discussion: The suggested definition of ''affiliated'' is too narrow. In the context of these regulations, the term ''affiliated'' means any relationship or arrangement between the bank where an account is opened and any other bank that permits a student to make free cash withdrawals from the student's accounts. With regard to convenient access, we agree that some geographical limits are needed, but these limits apply only to students who are on or near the institution's campus. We believe it would be unreasonable to require an institution to ensure that students enrolled in its distance education programs have convenient access to branch offices or ATMs that offer free cash withdrawals regardless of where those students reside.

Changes: Section 668.164(c)(3)(v) is amended by replacing ''affiliated bank'' with ''another bank.'' Section 668.164(c)(3)(v) is amended to describe ''convenient access'' as having a branch office of the bank or an ATM located (1) on the institution's campus, (2) in institutionally-owned or operated facilities, or (3) immediately adjacent to and accessible from the campus, consistent with the definition of ''Public Property'' in § 668.46(a).

Comment: One commenter suggested that the regulations clarify that service providers who help institutions disburse credit-balance funds electronically are ''third-party servicers'' as provided in § 668.2 and, therefore, subject to annual audit and financial responsibility requirements. The commenter contended that a number of service providers do not comply with these requirements and requested that the Department act proactively to reduce the Federal financial risk and the risk posed to the institutions involved.

Discussion: As provided under § 668.23(a)(3) and (c), third-party servicers for institutions must submit compliance audits but are not subject to financial standards and are not required to submit financial audits. If the commenter's description of service providers refers to banks that enter into agreements with institutions to issue and service stored-value cards, we have heretofore not considered the third-party servicer definition in § 668.2 to apply to banking services provided to institutions.

With regard to any information the commenter may have about any parties that should, but do not, comply with Title IV regulations, the commenter should notify the Department's Office of the Inspector General.

Change: None.

Comments: One commenter disagreed with the provision in § 668.164(c)(3), under which an institution may request, but not require or rely upon, the student to open a bank account. The commenter believed that an institution should have the flexibility to require a student to authorize an EFT, noting that this practice is used by many employers for payroll purposes.

Discussion: The Department intended to make it easier for an institution to make EFT payments by removing the requirement in § 668.165(b)(1)(i) that the institution first obtain authorization to disburse Title IV funds to a bank account designated by the student or parent. The provisions proposed in § 668.164(c)(3) relate to situations where the institution opens a bank account on behalf of the student (or is actively involved in opening the account) for the purpose of making EFT payments of Title IV funds to that account. For these cases only, the institution must obtain the consent of the student or parent before it opens the bank account. In all other cases, the Department agrees that an institution may establish a policy requiring a student to provide bank account information or open an account at a bank of the student's choosing, as long as this policy does not delay the disbursement of Title IV funds to the student. Thus, if a student does not provide bank account information or does not maintain a bank account—e.g., the student does not qualify for a bank account or refuses to open an account—the institution must nevertheless disburse the Title IV funds to the student in a timely manner by some other means.

Changes: Section 668.164(c)(3) is amended to provide that an institution may establish a policy requiring students to provide bank account information or open an account at a bank of the student's choosing.

Cash Management—Late Disbursements (§ 668.164(g))

Comment: One commenter representing a guaranty agency urged the Department to consider an exception appeal process under which a late disbursement could be made after the proposed 180-day period. The commenter stated that a student should not be harmed by an oversight or anomaly in the institution's or lender's process and offered that the FFEL Program guarantor could monitor and manage this exception process, eliminating the need for the institution to contact the Department.

Discussion: While we appreciate the guaranty agency's offer, this change is not being made to respond to a workload issue. Rather, our experience with providing an exception process for making late disbursements is that institutions tend to rely on this process rather than implementing effective administrative controls for making timely disbursements. We believe that extending the timeframe from 120 days to 180 days provides institutions, lenders, and guaranty agencies more than sufficient time to identify and make late disbursements to students who may be affected by oversight and process anomalies.

Change: None.

Loan Cancellation Notice and Affirmative Confirmation of a Loan (§ 668.165(a))

Comments: Several commenters agreed with the flexible approach in the NPRM allowing an institution to either affirmatively confirm that a student wants a loan or comply with more stringent loan notification and cancellation provisions. A few commenters requested that the Department provide examples of an affirmative confirmation of a loan.

Discussion: The Department would consider an affirmative confirmation to be a student response, either in electronic form or on paper, accepting the loan or loans offered by the institution. Examples of affirmative confirmation by a student are an award letter signed by the student accepting the loan award or a process whereby the student accesses a secure Web site to inform the institution that the student accepts the loan.

Change: None.

Minimum Period for Certifying or Originating a Loan (§§ 682.603 and 685.301)

Comments: Several commenters supported the proposed change allowing transfer students to obtain the remaining portion of their current annual loan limit for the remaining portion of their program or academic year. However, one commenter questioned how this would work in practice. The commenter asked whether the number of transfer credits accepted or the number of transfer credits earned during the overlapping loan period would have any bearing on the implementation of this proposed change. The commenter asked us to consider the example of a student with a loan period of 11/12/06 to 9/30/07 at a previous institution that transferred with 18 credits to a new institution where the student had a loan period of 8/15/07 to 5/25/08. The student received $2,000 (out of a possible $3,500) at the first institution for a loan period that overlapped the loan period at the second institution. The commenter stated that under the previous regulations the second institution could only provide the student, for the second loan period of 8/15/07 to 5/25/08, with $1,500, *i.e.*, the difference between what the student could have received at the first institution ($3,500) and what the student did receive there ($2,000). The commenter wondered how the second institution could award loan funds to the student in this example under the proposed regulations.

Another commenter inquired about the proposed regulation that allows institutions to certify or originate new loans for students when they complete a degree program using a loan period of less than an academic year and then begin another degree program for the remainder of the same academic year at the same institution. The commenter suggested that students in non-degree programs should receive similar treatment. Another commenter asked whether this proposal would address a student who finished a bachelor's degree and immediately began a master's degree at the same institution in the same way that it addressed a student who finished an associate's degree and immediately began a bachelor's degree.

Another commenter asked us to clarify whether the meaning of the phrase ''substantially equal in length'' in §§ 682.603(g)(4) and 685.301(c)(4), is applicable to all references in §§ 682.603 and 685.301 where that phrase is used.

Discussion: In the first commenter's example, a student, eligible for $3,500, who received a loan of $2,000 for a loan period of 11/12/06 to 9/30/07 at one institution and who transferred with 18 credits to a second institution where the student would normally have a loan period of 8/15/07 to 5/25/08, could, under these final regulations, receive a loan at the second institution for the balance of the annual loan limit for the balance of the academic year that started at the first institution. Neither the number of credits transferred into the second institution nor the number of credits earned during the overlapping loan period is relevant. Thus, this student, if otherwise eligible, could receive a loan of $1500 for a loan period of 8/15/07 to 9/30/07. Note that if the overlapping loan period were sufficiently short (perhaps less than a month) some lenders might decline to make a loan. In that case, the student would not receive a loan for that short period of time and would end up with a new loan period starting on the day after the old loan period ended. After the balance of the loan period from the first institution ends (*i.e.*, starting on 10/1/07), the student could receive a new loan for a new academic year (or for the remainder of the program if there were less than an academic year remaining in the student's program), irrespective of whether the 10/1/07 date coincided with the start of the student's classes, as long as the student was enrolled and eligible at that time.

With regard to the comment about whether a student who finished a bachelor's degree and immediately began a master's degree at the same institution would be treated in the same way as a student who finished an associate's degree and immediately began a bachelor's degree, we note that the regulations do not differentiate between types of degree programs. And with regard to the suggestion that students in non-degree programs should be treated the same way as students in degree programs are treated, we agree that they should be. Accordingly, all situations are addressed in the same manner when a student finishes one program for which the student's last loan was for less than an academic year and immediately starts another program at the same institution. That is, the institution may certify or originate a loan for the remainder of the academic year for the remaining balance of the student's annual loan limit at the loan level associated with the new program.

Finally, because it would more accurately describe our intent, we agree with the commenter's suggestion to apply the meaning of the phrase ''substantially equal in length'' to all of §§ 682.603 and 685.301.

Changes: Sections 682.603(f)(1)(iii) and 685.301(a)(9)(iii) are amended by removing the wording that restricted these regulations to degree programs. Also, we have clarified that the meaning of ''substantially equal in length'' in §§ 682.603(g)(4) and 685.301(c)(4) is applicable to all of §§ 682.603 and 685.301.

Annual Loan Limit Progression (§§ 682.603 and 685.301)

Comments: One commenter stated that a student in a nonstandard term credit hour program with terms that are substantially equal in length, where the terms are at least eight weeks in length rather than the proposed nine weeks in length, should progress to the next loan limit when the student completes an academic year in calendar time. The commenter noted that eight-week terms are a natural subdivision of the 16-week standard semester used for traditional students, and should be treated in the same manner as standard terms.

Another commenter stated that a student in any nonstandard term credit hour program with terms that are substantially equal in length, not just those with terms that are at least nine weeks in length, should progress to the next loan limit when the student completes an academic year in calendar time. The commenter noted that the disbursement requirements in the regulations published in the **Federal Register** on November 1, 2000 (65 FR 65616), with which these regulations are supposed to be consistent, did not make such a distinction. The commenter also noted that a student in a nonstandard term credit hour program, with terms that are substantially equal in length but not at least nine weeks in length, does not have to successfully complete a payment period to advance to the next payment period. The commenter suggests that the student could progress to the next payment period even if the student failed some or all of the courses in the payment period. However, under the proposed changes, the student who failed some or all of the courses in the payment period would not progress to the next annual loan limit until the student successfully completes the failed hours.

One commenter asked the Department to clarify that an institution may certify or originate a Stafford loan increase for a student attending a nonstandard term program with substantially equal terms of the appropriate length when that student's grade level standing advances and that student gains eligibility for a higher Stafford annual loan limit during an academic year. The commenter also asked the Department to clarify whether an institution must prorate the FFEL or Direct Loan Stafford annual loan limit for a student attending an undergraduate program offered in nonstandard terms that are substantially equal in length, and of the appropriate minimum length, when the student is enrolled in a final period of study consisting of fewer terms than are in the academic year.

Discussion: The Department proposed the nine-week minimum for purposes of defining when a single term loan may be made in a nonstandard term program with terms that are substantially equal in length. As noted in the preamble to the NPRM (72 FR 44632 and 44633), the Department believes that the minimum length should be close to the length of the shortest standard term, a quarter, in order to justify single term loan certification or origination and standard term-based annual loan limit progression. We do not believe that eight-week terms are sufficiently close to 10-week quarters for this expanded purpose.

The commenter is correct that the requirements for completion of a payment period for purposes of disbursement within the loan period for students in nonstandard-term credit hour programs with terms that are substantially equal in length do not distinguish between those terms that are at least nine weeks in length and those that are not. For completion of a payment period, all students in nonstandard term credit hour programs with terms that are substantially equal in length, irrespective of the length of those terms, are treated the same as students in standard term programs. That is, they do not have to successfully complete (i.e., pass the coursework in) a payment period to advance to the next payment period. However, the student who failed to complete the coursework in an academic year would not progress to the next academic year, and thus regain eligibility for the next annual loan limit, until the student successfully completes the failed hours. This restriction has historically been applied to clock hour programs, non-term credit hour programs, and nonstandard term credit hour programs. Many of these programs have tended to be shorter in duration and more focused on providing vocational skills. Although we have provided more flexibility in making loan disbursements by payment period for all nonstandard term credit hour programs with terms that are substantially equal in length within the loan period, we do not believe that we should extend similar flexibility to these programs in the area of loan certification or origination and annual loan limit progression. We believe doing so would result in increasing student loan indebtedness for students who are not making adequate progress toward their educational goals and who, as a result, may by at greater risk of dropping out and defaulting on their student loans.

For the same reason, an institution may not certify or originate a FFEL or Direct Loan increase for a student attending a nonstandard term credit hour program with terms substantially equal in length, that are not at least nine weeks in length, when that student's grade level standing advances. That is, we would not allow a student to gain eligibility for a higher Stafford annual loan limit during an academic year in this situation. Likewise, an undergraduate student attending a final period of study in any nonstandard term credit hour program is subject to proration of the annual loan limit while enrolled in the defined number of terms in the program's academic year but attending less than the number of credit hours for that defined academic year.

Change: None.

Processing the Borrower's Loan Proceeds and Counseling Borrowers (§§ 682.604 and 685.301)

Comment: None.

Discussion: FFEL and Direct loans may be certified or originated for a single payment period (e.g., a single semester) for institutions that measure progress in credit hours and use a semester, trimester, or quarter system, or have terms that are substantially equal in length with no term less than nine weeks in length. Sections 682.604(c)(6)(ii) and 685.301(b)(3)(ii) address the delivery and disbursement of loan proceeds when a loan is certified or originated for a single payment period. Basically, loans made for a single payment period must be paid to the student in two installments. However, in proposing changes to these sections of the regulations in the NPRM, we inadvertently included language that would modify that basic requirement for standard terms and terms that are substantially equal in length with no term less than nine weeks in length when no change was intended for those terms. Currently an institution may not make the second payment of funds until the calendar midpoint of the loan period. The NPRM proposed to change that requirement to one in which the institution could not make the second payment of funds until the student successfully completes half the number of credit or clock hours and half the number of weeks of instructional time in the payment period. This change was not intended for standard terms and terms that are substantially equal in length with no term less than nine weeks in length and, indeed, would create a situation most of the time for those terms in which a student would not be able to receive the second half of the loan until the student was finished with the loan period (e.g., until the student was finished with the semester for which the student was borrowing money).

Change: Sections 682.604(c)(6)(ii) and 685.301(b)(3)(ii) are amended, with respect to the required two deliveries of loan proceeds (FFEL) and two payments of a loan (Direct Loan) when the loan is made for a single term, to apply the current requirements for single (standard) term loans to standard terms and terms that are substantially equal in length with no term less than nine weeks in length.

Calculation of a Pell Grant (§§ 690.63 and 690.66)

Comment: Several commenters supported the proposed change in the Pell Grant calculations for programs using credit hours without terms or clock hours and for correspondence courses using credit hours without terms. They stated that the proposed changes would provide greater equity for students attending clock hour institutions by removing the current double proration of Pell Grant awards that affects these students in some situations.

Discussion: We appreciate the commenters' support.

Change: None.

Method of Disbursement (§§ 690.78 and 691.78)

Comment: None.

Discussion: During our intradepartmental review we found that the disbursement provisions in §§ 690.78 and 691.78 have been replaced or superseded by the provisions in the Cash Management Regulations in subpart K of part 668 of the Title IV regulations. This change was inadvertently omitted from the proposed regulations.

Changes: We have removed and reserved §§ 690.78 and 691.78.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this final regulatory action will not have an annual effect on the economy of more than $100 million. Therefore, this action is not ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. In the interests of transparency and public information, the Secretary nonetheless has assessed the potential costs and benefits of this regulatory action and has determined the benefits justify the costs. This assessment was discussed in detail in the NPRM. The Department received no comments on the regulatory impact analysis portion of the NPRM.

Need for Federal Regulatory Action

These final regulations address a broad range of issues affecting students, borrowers, schools, lenders, guaranty agencies, secondary market participants, and third-party servicers participating in one or more of the Perkins Loan, FSEOG, FFEL, Direct Loan, Pell Grant, ACG, and National SMART Grant programs. Prior to the start of negotiated rulemaking, a list of proposed regulatory changes was developed from advice and recommendations by interested parties and organizations submitted through testimony at public hearings and written comments submitted directly to the Department of Education in Washington, DC. Staff within the Office of Postsecondary Education also identified issues for discussion and negotiation.

Regulatory Alternatives Considered

A broad range of alternatives to the proposed regulations was considered as part of the negotiated rulemaking process. These alternatives were reviewed in detail in the NRPM under the Reasons sections accompanying the discussion of each proposed regulatory provision. In assessing the budgetary impact of these alternatives, the Department considered the effect of possible changes on the size or timing of Federal student aid disbursements. In all cases, the alternatives considered—which generally dealt with the consolidation or clarification of existing definitions, procedures, or processes to simplify program administration—did not have a measurable effect on Federal costs. No comments or additional information have been received since the publication of the NPRM to cause the Department to reconsider this determination.

Benefits

Many of the final regulations consolidate existing regulations, codify existing interpretations and guidance, or make minor changes intended to establish consistent definitions or streamline program operations across the various Federal student aid programs. The Department determined that the additional clarity and enhanced efficiency resulting from these changes represent benefits with little or no countervailing costs or additional burden. This determination is strongly supported by the fact that the negotiated rulemaking committee reached consensus on the proposed regulations. No comments or additional information have been received since the publication of the NPRM to cause the Department to reconsider this determination.

Benefits provided in these regulations include the clarification or consolidation of rules or definitions involving enrollment statuses, independent study for direct assessment programs, cash management rules, disbursement and payment periods, return of Title IV aid, and the calculation of Pell Grant awards. None of these provisions were determined to have a substantial economic impact.

Costs

Because entities affected by these regulations already participate in the Title IV, HEA programs, these lenders, guaranty agencies, and institutions of higher education must have already established systems and procedures in place to meet program eligibility requirements. All of the final regulations involve changes in specific parameters associated with existing guidance rather than entirely new requirements. Accordingly, entities wishing to continue to participate in the Federal student aid programs have already absorbed most of the administrative costs related to implementing these final regulations. Marginal costs associated with these regulations, which are not expected to be significant, are primarily related to one-time system changes that are an unavoidable cost of continued program participation. The provisions impose no costs to individual students and loan borrowers. None of these provisions were determined to have a substantial economic impact or impose a significant burden; and no comments or information has been received since the publication of the NPRM that would cause the Department to reconsider this determination.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 1 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these final regulations.

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]

Category	Transfers
Annualized Monetized Transfers	$0.00

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. These final regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration (SBA) Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Flexibility Act. Individuals are also not defined as ''small entities'' under the Regulatory Flexibility Act.

A significant percentage of the schools and lenders participating in the Federal student loan programs meet the definition of ''small entities.'' While these schools and lenders fall within the SBA size guidelines, the final regulations do not impose significant new costs on these entities. In the NPRM the Secretary invited comments from small institutions as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief. The Department received no comments on the regulatory flexibility act portion of the NPRM.

Paperwork Reduction Act of 1995

This regulation contains information collection requirements that were reviewed as part of the comment period on the NPRM. The Department received no comments on the Paperwork Reduction Act portion of the NPRM.

In regard to other information collection requirements described in the NPRM, the Paperwork Reduction Act of 1995 does not require a response to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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/fedregister.*

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 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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.*

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program; 84.375 Academic Competitiveness Grants; and 84.376 SMART Grants)

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 674 and 676

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Employment, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loans program—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 690 and 691

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Dated: October 23, 2007.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 668, 674, 676, 682, 685, 690, and 691 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

■ 2. Section 668.2(b) is amended by adding, in alphabetical order, the definitions *Graduate or professional student, Half-time student, Professional degree, Three-quarter time student*, and *Undergraduate student* and revising the definition of *Full-time student* to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Full-time student: An enrolled student who is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

(1) For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.

(2) For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.

(3) For a program that measures progress in credit hours and uses nonstandard terms (terms other than semesters, trimesters or quarters) the number of credits determined by—

(i) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year; and

(ii) Multiplying the fraction determined under paragraph (3)(i) of this definition by the number of credit hours in the program's academic year.

(4) For a program that measures progress in clock hours, 24 clock hours per week.

(5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(7) For correspondence coursework, a full-time courseload must be—

(i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of this definition; and

(ii) At least one-half of the coursework must be made up of non-correspondence coursework that meets one-half of the institution's requirement for full-time students.

(Authority: 20 U.S.C. 1082 and 1088)

* * * * *

Graduate or professional student: A student who—

(1) Is not receiving title IV aid as an undergraduate student for the same period of enrollment;

(2) Is enrolled in a program or course above the baccalaureate level or is enrolled in a program leading to a professional degree; and

(3) Has completed the equivalent of at least three years of full-time study either prior to entrance into the program or as part of the program itself.

(Authority: 20 U.S.C. 1082 and 1088)

Half-time student: (1) Except as provided in paragraph (2) of this definition, an enrolled student who is carrying a half-time academic workload, as determined by the institution, that amounts to at least half of the workload of the applicable minimum requirement outlined in the definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a workload of at least 12 hours of work per week, or is earning at least six credit hours per semester, trimester, or quarter. However, regardless of the work, no student

enrolled solely in correspondence study is considered more than a half-time student.

(Authority: 20 U.S.C. 1082 and 1088)

* * * * *

Professional degree: A degree that signifies both completion of the academic requirements for beginning practice in a given profession and a level of professional skill beyond that normally required for a bachelor's degree. Professional licensure is also generally required. Examples of a professional degree include but are not limited to Pharmacy (Pharm.D.), Dentistry (D.D.S. or D.M.D.), Veterinary Medicine (D.V.M.), Chiropractic (D.C. or D.C.M.), Law (L.L.B. or J.D.), Medicine (M.D.), Optometry (O.D.), Osteopathic Medicine (D.O.), Podiatry (D.P.M., D.P., or Pod.D.), and Theology (M.Div., or M.H.L.).

(Authority: 20 U.S.C. 1082 and 1088)

* * * * *

Three-quarter time student: An enrolled student who is carrying a three-quarter-time academic workload, as determined by the institution, that amounts to at least three quarters of the work of the applicable minimum requirement outlined in the definition of a full-time student.

(Authority: 20 U.S.C. 1082 and 1088)

* * * * *

Undergraduate student: (1) A student who is enrolled in an undergraduate course of study that usually does not exceed four years, or is enrolled in a longer program designed to lead to a degree at the baccalaureate level. For purposes of 34 CFR 690.6(c)(5) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

(2) In addition to meeting the definition in paragraph (1) of this definition, a student is only considered an undergraduate for purposes of the Federal Supplemental Educational Opportunity Grant (FSEOG) Program, the Federal Pell Grant Program, the Academic Competitiveness Grant (ACG) Program, and National Science and Mathematics Access to Retain Talent (SMART) Grant Program if the student has not yet earned a baccalaureate or professional degree. However, for purposes of 34 CFR 690.6(c)(5) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

(3) For purposes of dual degree programs that allow individuals to complete a bachelor's degree and either a graduate or professional degree within the same program, a student is considered an undergraduate student for at least the first three years of that program.

(4) A student enrolled in a four to five year program designed to lead to an undergraduate degree. A student enrolled in a program of any other, longer length is considered an undergraduate student for only the first four years of that program.

(Authority: 20 U.S.C. 1082 and 1088)

* * * * *

■ 3. Section 668.4 is revised to read as follows:

§ 668.4 Payment period.

(a) *Payment periods for an eligible program that measures progress in credit hours and uses standard terms or nonstandard terms that are substantially equal in length.* For a student enrolled in an eligible program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), or for a student enrolled in an eligible program that measures progress in credit hours and uses nonstandard terms that are substantially equal in length, the payment period is the academic term.

(b) *Payment periods for an eligible program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length.* For a student enrolled in an eligible program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length—

(1) For Pell Grant, ACG, National SMART Grant, FSEOG, and Perkins Loan program funds, the payment period is the academic term;

(2) For FFEL and Direct Loan program funds—

(i) For a student enrolled in an eligible program that is one academic year or less in length—

(A) The first payment period is the period of time in which the student successfully completes half of the number of credit hours in the program and half of the number of weeks of instructional time in the program; and

(B) The second payment period is the period of time in which the student successfully completes the program; and

(ii) For a student enrolled in an eligible program that is more than one academic year in length—

(A) For the first academic year and any subsequent full academic year—

(*1*) The first payment period is the period of time in which the student successfully completes half of the number of credit hours in the academic year and half of the number of weeks of instructional time in the academic year; and

(*2*) The second payment period is the period of time in which the student successfully completes the academic year;

(B) For any remaining portion of an eligible program that is more than half an academic year but less than a full academic year in length—

(*1*) The first payment period is the period of time in which the student successfully completes half of the number of credit hours in the remaining portion of the program and half of the number of weeks of instructional time remaining in the program; and

(*2*) The second payment period is the period of time in which the student successfully completes the remainder of the program; and

(C) For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

(c) *Payment periods for an eligible program that measures progress in credit hours and does not have academic terms or for a program that measures progress in clock hours.* (1) For a student enrolled in an eligible program that is one academic year or less in length—

(i) The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the program and half of the number of weeks of instructional time in the program; and

(ii) The second payment period is the period of time in which the student successfully completes the program or the remainder of the program.

(2) For a student enrolled in an eligible program that is more than one academic year in length—

(i) For the first academic year and any subsequent full academic year—

(A) The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the academic year and half of the number of weeks of instructional time in the academic year; and

(B) The second payment period is the period of time in which the student successfully completes the academic year;

(ii) For any remaining portion of an eligible program that is more than half an academic year but less than a full academic year in length—

(A) The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the remaining portion of the program and half of the number of weeks of instructional time remaining in the program; and

(B) The second payment period is the period of time in which the student successfully completes the remainder of the program; and

(iii) For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

(3) For purposes of paragraphs (c)(1) and (c)(2) of this section, if an institution is unable to determine when a student has successfully completed half of the credit hours or clock hours in a program, academic year, or remainder of a program, the student is considered to begin the second payment period of the program, academic year, or remainder of a program at the later of the date, as determined by the institution, on which the student has successfully completed—

(i) Half of the academic coursework in the program, academic year, or remainder of the program; or

(ii) Half of the number of weeks of instructional time in the program, academic year, or remainder of the program.

(d) *Application of the cohort default rate exemption.* Notwithstanding paragraphs (a), (b), and (c) of this section, if 34 CFR 682.604(c)(10) or 34 CFR 685.301(b)(8) applies to an eligible program that measures progress in credit hours and uses nonstandard terms, an eligible program that measures progress in credit hours and does not have academic terms, or an eligible program that measures progress in clock hours, the payment period for purposes of FFEL and Direct Loan funds is the loan period for those portions of the program to which 34 CFR 682.604(c)(10) or 34 CFR 685.301(b)(8) applies.

(e) *Excused absences.* For purposes of this section, in determining whether a student successfully completes the clock hours in a payment period, an institution may include clock hours for which the student has an excused absence (i.e., an absence that a student does not have to make up) if—

(1) The institution has a written policy that permits excused absences; and

(2) The number of excused absences under the written policy for purposes of this paragraph (e) does not exceed the lesser of—

(i) The policy on excused absences of the institution's accrediting agency or, if the institution has more than one accrediting agency, the agency designated under 34 CFR 600.11(b);

(ii) The policy on excused absences of any State agency that licenses the institution or otherwise legally authorizes the institution to operate in the State; or

(iii) Ten percent of the clock hours in the payment period.

(f) *Re-entry within 180 days.* If a student withdraws from a program described in paragraph (c) of this section during a payment period and then reenters the same program within 180 days, the student remains in that same payment period when he or she returns and, subject to conditions established by the Secretary or by the FFEL lender or guaranty agency, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of § 668.22.

(g) *Re-entry after 180 days or transfer.* (1) Except as provided in paragraph (g)(3) of this section, and subject to the conditions of paragraph (g)(2) of this section, an institution calculates new payment periods for the remainder of a student's program based on paragraph (c) of this section, for a student who withdraws from a program described in paragraph (c) of this section, and—

(i) Reenters that program after 180 days;

(ii) Transfers into another program at the same institution within any time period; or

(iii) Transfers into a program at another institution within any time period.

(2) For a student described in paragraph (g)(1) of this section—

(i) For the purpose of calculating payment periods only, the length of the program is the number of credit hours and the number of weeks of instructional time, or the number of clock hours and the number of weeks of instructional time, that the student has remaining in the program he or she enters or reenters; and

(ii) If the remaining hours and weeks constitute half of an academic year or less, the remaining hours constitute one payment period.

(3) Notwithstanding the provisions of paragraph (g)(1) of this section, an institution may consider a student who transfers into another program at the same institution to remain in the same payment period if—

(i) The student is continuously enrolled at the institution;

(ii) The coursework in the payment period the student is transferring out of is substantially similar to the coursework the student will be taking when he or she first transfers into the new program;

(iii) The payment periods are substantially equal in length in weeks of instructional time and credit hours or clock hours, as applicable;

(iv) There are little or no changes in institutional charges associated with the payment period to the student; and

(v) The credits from the payment period the student is transferring out of are accepted toward the new program.

(h) *Definitions.* For purposes of this section—

(1) Terms are *substantially equal in length* if no term in the program is more than two weeks of instructional time longer than any other term in that program; and

(2) A student *successfully completes* credit hours or clock hours if the institution considers the student to have passed the coursework associated with those hours.

(Authority: 20 U.S.C. 1070 *et seq.*)

■ 4. Section 668.10 is amended by:

■ A. In paragraph (a)(3)(ii), removing the word ''or'' immediately after the reference ''668.4(a)'' and adding, in its place, the punctuation '','', and by adding the words '', or (c),'' immediately after the parenthetical ''(b)''.

■ B. Revising paragraph (a)(3)(iii).

■ C. Removing paragraphs (a)(3)(v) and (3)(vi).

The revision reads as follows:

§ 668.10 Direct assessment programs.

(a) * * *

(3) * * *

(iii) A week of instructional time in a direct assessment program is any seven-day period in which at least one day of educational activity occurs. Educational activity in a direct assessment program includes regularly scheduled learning sessions, faculty-guided independent study, consultations with a faculty mentor, development of an academic action plan addressed to the competencies identified by the institution, or, in combination with any of the foregoing, assessments. It does not include credit for life experience. For purposes of direct assessment programs, independent study occurs when a student follows a course of study with predefined objectives but works with a faculty member to decide how the student is going to meet those objectives. The student and faculty member agree on what the student will do (e.g., required readings, research, and work products), how the student's work will be evaluated, and on what the relative timeframe for completion of the work will be. The student must interact with the faculty member on a regular and substantive basis to assure progress within the course or program.

* * * * *

■ 5. Section 668.21 is revised to read as follows:

§ 668.21 Treatment of title IV grant and loan funds if the recipient does not begin attendance at the institution.

(a) If a student does not begin attendance in a payment period or period of enrollment—

(1) The institution must return all title IV, HEA program funds that were credited to the student's account at the institution or disbursed directly to the student for that payment period or period of enrollment, for Federal Perkins Loan, FSEOG, Federal Pell Grant, ACG, and National SMART Grant program funds; and

(2) For FFEL and Direct Loan funds—

(i)(A) The institution must return all FFEL and Direct Loan funds that were credited to the student's account at the institution for that payment period or period of enrollment; and

(B) The institution must return the amount of payments made directly by or on behalf of the student to the institution for that payment period or period of enrollment, up to the total amount of the loan funds disbursed;

(ii) For remaining amounts of FFEL or Direct Loan funds disbursed directly to the student for that payment period or period of enrollment, including funds that are disbursed directly to the student by the lender for a study-abroad program in accordance with § 682.207(b)(1)(v)(C)(*1*) or for a student enrolled in a foreign school in accordance with § 682.207(b)(1)(v)(D), the institution is not responsible for returning the funds, but must immediately notify the lender or the Secretary, as appropriate, when it becomes aware that the student will not or has not begun attendance so that the lender or Secretary will issue a final demand letter to the borrower in accordance with 34 CFR 682.412 or 34 CFR 685.211, as appropriate; and

(iii) Notwithstanding paragraph (a)(2)(ii) of this section, if an institution knew that a student would not begin attendance prior to disbursing FFEL or Direct Loan funds directly to the student for that payment period or period of enrollment (e.g., the student notified the institution that he or she would not attend, or the institution expelled the student), the institution must return those funds.

(b) The institution must return those funds for which it is responsible under paragraph (a) of this section to the respective title IV, HEA program as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance.

(c) For purposes of this section, the Secretary considers that a student has not begun attendance in a payment period or period of enrollment if the institution is unable to document the student's attendance at any class during the payment period or period of enrollment.

(d) In accordance with procedures established by the Secretary or FFEL Program lender, an institution returns title IV, HEA funds timely if—

(1) The institution deposits or transfers the funds into the bank account it maintains under § 668.163 as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance;

(2) The institution initiates an electronic funds transfer (EFT) as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance;

(3) The institution initiates an electronic transaction, as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance, that informs an FFEL lender to adjust the borrower's loan account for the amount returned; or

(4) The institution issues a check as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance. An institution does not satisfy this requirement if—

(i) The institution's records show that the check was issued more than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance; or

(ii) The date on the cancelled check shows that the bank used by the Secretary or FFEL Program lender endorsed that check more than 45 days after the date that the institution becomes aware that the student will not or has not begun attendance.

(Authority: 20 U.S.C. 1094)

■ 6. Section 668.22 is amended by:

■ A. Revising paragraph (a)(5).

■ B. Adding paragraphs (e)(5)(iii) and (l)(5).

The revision and additions read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

(a) * * *

(5)(i) A post-withdrawal disbursement must be made from available grant funds before available loan funds.

(ii)(A) If outstanding charges exist on the student's account, the institution may credit the student's account up to the amount of outstanding charges with all or a portion of any—

(*1*) Grant funds that make up the post-withdrawal disbursement in accordance with § 668.164(d)(1) and (d)(2); and

(*2*) Loan funds that make up the post-withdrawal disbursement in accordance with § 668.164(d)(1), (d)(2), and (d)(3) only after obtaining confirmation from the student or parent in the case of a parent PLUS loan, that they still wish to have the loan funds disbursed in accordance with paragraph (a)(5)(iii) of this section.

(B)(*1*) The institution must disburse directly to a student any amount of a post-withdrawal disbursement of grant funds that is not credited to the student's account. The institution must make the disbursement as soon as possible, but no later than 45 days after the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(*2*) The institution must offer to disburse directly to a student, or parent in the case of a parent PLUS loan, any amount of a post-withdrawal disbursement of loan funds that is not credited to the student's account, in accordance with paragraph (a)(5)(iii) of this section.

(*3*) The institution must make a direct disbursement of any loan funds that make up the post-withdrawal disbursement only after obtaining the student's, or parent's in the case of a parent PLUS loan, confirmation that the student or parent still wishes to have the loan funds disbursed in accordance with paragraph (a)(5)(iii) of this section.

(iii)(A) The institution must provide within 30 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section, a written notification to the student, or parent in the case of parent PLUS loan, that—

(*1*) Requests confirmation of any post-withdrawal disbursement of loan funds that the institution wishes to credit to the student's account in accordance with paragraph (a)(5)(ii)(A)(*2*) of this section, identifying the type and amount of those loan funds and explaining that a student, or parent in the case of a parent PLUS loan, may accept or decline some or all of those funds;

(*2*) Requests confirmation of any post-withdrawal disbursement of loan funds that the student, or parent in the case of a parent PLUS loan, can receive as a direct disbursement, identifying the type and amount of these title IV funds and explaining that the student, or parent in the case of a parent PLUS loan, may accept or decline some or all of those funds;

(*3*) Explains that a student, or parent in the case of a parent PLUS loan, who does not confirm that a post-withdrawal disbursement of loan funds may be credited to the student's account may not receive any of those loan funds as a direct disbursement unless the institution concurs;

(*4*) Explains the obligation of the student, or parent in the case of a parent PLUS loan, to repay any loan funds he or she chooses to have disbursed; and

(*5*) Advises the student, or parent in the case of a parent PLUS loan, that no post-withdrawal disbursement of loan funds will be made, unless the institution chooses to make a post-withdrawal disbursement based on a late response in accordance with paragraph (a)(5)(iii)(C) of this section, if the student or parent in the case of a parent PLUS loan, does not respond within 14 days of the date that the institution sent the notification, or a later deadline set by the institution.

(B) The deadline for a student, or parent in the case of a parent PLUS loan, to accept a post-withdrawal disbursement under paragraph (a)(5)(iii)(A) of this section must be the same for both a confirmation of a direct disbursement of the post-withdrawal disbursement of loan funds and a confirmation of a post-withdrawal disbursement of loan funds to be credited to the student's account.

(C) If the student, or parent in the case of a parent PLUS loan, submits a timely response that confirms that they wish to receive all or a portion of a direct disbursement of the post-withdrawal disbursement of loan funds, or confirms that a post-withdrawal disbursement of loan funds may be credited to the student's account, the institution must disburse the funds in the manner specified by the student, or parent in the case of a parent PLUS loan, as soon as possible, but no later than 180 days after the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(D) If a student, or parent in the case of a parent PLUS loan, submits a late response to the institution's notice requesting confirmation, the institution may make the post-withdrawal disbursement of loan funds as instructed by the student, or parent in the case of a parent PLUS loan (provided the institution disburses all the funds accepted by the student, or parent in the case of a parent PLUS loan), or decline to do so.

(E) If a student, or parent in the case of a parent PLUS loan, submits a late response to the institution and the institution does not choose to make the post-withdrawal disbursement of loan funds, the institution must inform the student, or parent in the case of a parent PLUS loan, in writing of the outcome of the post-withdrawal disbursement request.

(F) If the student, or parent in the case of a parent PLUS loan, does not respond to the institution's notice, no portion of the post-withdrawal disbursement of loan funds that the institution wishes to credit to the student's account, nor any portion of loan funds that would be disbursed directly to the student, or parent in the case of a parent PLUS loan, may be disbursed.

(iv) An institution must document in the student's file the result of any notification made in accordance with paragraph (a)(5)(iii) of this section of the student's right to cancel all or a portion of loan funds or of the student's right to accept or decline loan funds, and the final determination made concerning the disbursement.

* * * * *

(e) * * *

(5) * * *

(iii) For a program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length, if the institution uses the payment period to determine the treatment of title IV grant or loan funds for a category of students found in paragraph (e)(5)(ii)(B) of this section, the institution must—

(A)(*1*) For students in the category who are disbursed or could have been disbursed aid using both the payment period definition in § 668.4(b)(1) and the payment period definition in § 668.4(b)(2), use the payment period during which the student withdrew that ends later; and

(*2*) If in the payment period that ends later there are funds that have been or could have been disbursed from overlapping payment periods, the institution must include in the return calculation any funds that can be attributed to the payment period that ends later; and

(B) For students in the category who are disbursed or could have been disbursed aid using only the payment period definition in § 668.4(b)(1) or the payment period definition in § 668.4(b)(2), use the payment period definition for which title IV, HEA program funds were disbursed for a student's calculation under this section.

* * * * *

(l) * * *

(5) Terms are ''substantially equal in length'' if no term in the program is more than two weeks of instructional time longer than any other term in that program.

* * * * *

■ 7. Section 668.161 is amended by revising paragraph (b) to read as follows:

§ 668.161 Scope and purpose.

* * * * *

(b) *Federal interest in title IV, HEA program funds.* Except for funds received by an institution for administrative expenses and for funds used for the Job Location and Development Program under the FWS Programs, funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries, the Secretary, or lender or a guaranty agency under the FFEL programs. The institution, as a trustee of Federal funds, may not use or hypothecate (i.e., use as collateral) title IV, HEA program funds for any other purpose.

* * * * *

■ 8. Section 668.164 is amended by:

■ A. Revising paragraphs (b), (c), and (d).

■ B. Revising paragraph (g)(4)(i).

■ C. Adding a new paragraph (h).

The revisions and addition read as follows:

§ 668.164 Disbursing funds.

* * * * *

(b) *Disbursements by payment period.* (1) Except as provided in paragraph (b)(2) of this section, an institution must disburse title IV, HEA program funds on a payment period basis. An institution must disburse title IV, HEA program funds once each payment period unless—

(i) For FFEL and Direct Loan funds, 34 CFR 682.604(c)(6)(ii) or 34 CFR 685.301(b)(3) applies;

(ii) For Federal Perkins Loan, FSEOG, Federal Pell Grant, ACG, and National SMART Grant funds, an institution chooses to make more than one disbursement in each payment period in accordance with 34 CFR 674.16(b)(3), 34 CFR 676.16(a)(3), 34 CFR 690.76, or 34 CFR 691.76, as applicable; or

(iii) Other program regulations allow or require otherwise.

(2) The provisions of paragraph (b)(1) of this section do not apply to the disbursement of FWS Program funds.

(3) Except as provided in paragraph (g) of this section, an institution may disburse title IV, HEA program funds to a student or parent for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.

(c) *Direct payments.* (1) An institution pays a student or parent directly by—

(i) Releasing to the student or parent a check provided by a lender to the institution under the FFEL Program;

(ii) Issuing a check payable to and requiring the endorsement of the student or parent. An institution issues a check on the date that it—

(A) Mails the check to the student or parent; or

(B) Notifies the student that the check is available for immediate pickup at a specified location at the institution. The institution may hold the check for up to 21 days after the date it notifies the student. If the student does not pick up the check within this 21-day period, the institution must immediately mail the check to the student or parent, initiate an EFT to the student's or parent's bank account, or return the funds to the appropriate title IV, HEA program;

(iii) Initiating an EFT to a bank account designated by the student or parent; or

(iv) Dispensing cash for which the institution obtains a signed receipt from the student or parent.

(2) For purposes of this section, ''bank account'' means an account insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF). This account may be a checking, savings, or similar account that underlies a stored-value card or other transaction device.

(3) An institution may establish a policy requiring its students to provide bank account information or open an account at a bank of their choosing as long as this policy does not delay the disbursement of title IV, HEA program funds to students. Consequently, if a student does not comply with the institution's policy, the institution must nevertheless disburse the funds to the student using a method described in paragraph (c) of this section in accordance with any timeframes required under subpart k of this part. In cases where the institution opens a bank account on behalf of a student or parent, establishes a process the student or parent follows to open a bank account, or similarly assists the student or parent in opening a bank account, the institution must—

(i) Obtain in writing affirmative consent from the student or parent to open that account;

(ii) Before the account is opened, inform the student or parent of the terms and conditions associated with accepting and using the account;

(iii) Not make any claims against the funds in the account without the written permission of the student or parent, except for correcting an error in transferring the funds in accordance with banking protocols;

(iv) Ensure that the student or parent does not incur any cost in opening the account or initially receiving any type of debit card, stored-value card, other type of automated teller machine (ATM) card, or similar transaction device that is used to access the funds in that account;

(v) Ensure that the student has convenient access to a branch office of the bank or an ATM of the bank in which the account was opened (or an ATM of another bank), so that the student does not incur any cost in making cash withdrawals from that office or these ATMs. This branch office or these ATMs must be located on the institution's campus, in institutionally-owned or operated facilities, or, consistent with the meaning of the term ''Public Property'' as defined in § 668.46(a), immediately adjacent to and accessible from the campus;

(vi) Ensure that the debit, stored-value or ATM card, or other device can be widely used, e.g., the institution may not limit the use of the card or device to particular vendors; and

(vii) Not market or portray the account, card, or device as a credit card or credit instrument, or subsequently convert the account, card, or device to a credit card or credit instrument.

(d) *Crediting a student's account at the institution.* An institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy—

(1) Current year charges for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board;

(iii) Room, if the student contracts with the institution for room; and

(iv) If the institution obtains the student's or parent's authorization under § 668.165(b), other educationally related charges incurred by the student at the institution; and

(2) Prior award year charges for a total of not more than $200 for—

(i) Tuition and fees, room, or board; and

(ii) If the institution obtains the student's or parent's authorization under § 668.165(b), other educationally related charges incurred by the student at the institution.

* * * * *

(g) * * *

(4) * * *

(i) An institution may not make a late disbursement later than 180 days after the date of the institution's determination that the student withdrew, as provided in § 668.22, or for a student who did not withdraw, 180 days after the date the student otherwise becomes ineligible.

* * * * *

(h) *Returning funds.* (1) Notwithstanding any State law (such as a law that allows funds to escheat to the State), an institution must return to the Secretary, lender, or guaranty agency, any title IV, HEA program funds, except FWS program funds, that it attempts to disburse directly to a student or parent but the student or parent does not receive or negotiate those funds. For FWS program funds, the institution is required to return only the Federal portion of the payroll disbursement.

(2) If an institution attempts to disburse the funds by check and the check is not cashed, the institution must return the funds no later than 240 days after the date it issued that check.

(3)(i) If a check is returned to the institution, or an EFT is rejected, the institution may make additional attempts to disburse the funds, provided that those attempts are made not later than 45 days after the funds were returned or rejected. In cases where the institution does not make another attempt, the funds must be returned before the end of this 45 day period; and

(ii) No later than the 240 day period described in paragraph (h)(2) of this section, the institution must cease any additional disbursement attempts and immediately return those funds.

* * * * *

■ 9. Section 668.165 is amended by:

■ A. Revising paragraph (a).

■ B. Revising paragraph (b)(1).

The revisions read as follows:

§ 668.165 Notices and authorizations.

(a) *Notices.* (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan or FFEL Program funds, the notice must indicate which funds are from subsidized loans and which are from unsubsidized loans.

(2) Except in the case of a post-withdrawal disbursement made in accordance with § 668.22(a)(5), if an institution credits a student's account at the institution with Direct Loan, FFEL, or Federal Perkins Loan Program funds, the institution must notify the student or parent of—

(i) The anticipated date and amount of the disbursement;

(ii) The student's right or parent's right to cancel all or a portion of that loan or loan disbursement and have the loan proceeds returned to the holder of that loan. However, if the institution releases a check provided by a lender under the FFEL Program, the institution is not required to provide this information; and

(iii) The procedures and time by which the student or parent must notify the institution that he or she wishes to cancel the loan or loan disbursement.

(3) The institution must provide the notice described in paragraph (a)(2) of this section in writing—

(i) No earlier than 30 days before, and no later than 30 days after, crediting the student's account at the institution, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(ii) No earlier than 30 days before, and no later than seven days after, crediting the student account at the institution, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(4)(i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan or loan disbursement.

(ii) The institution must return the loan proceeds, cancel the loan, or do both, in accordance with program regulations provided that the institution receives a loan cancellation request—

(A) The later of the first day of a payment period or 14 days after the date it notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(B) Within 30 days of the date the institution notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii)(A) or (B) of this section, the institution may return the loan proceeds, cancel the loan, or do both, in accordance with program regulations.

(5) An institution must inform the student or parent in writing regarding the outcome of any cancellation request.

(6) For purposes of this section—

(i) Affirmative confirmation is a process under which an institution obtains written confirmation of the types and amounts of title IV, HEA program loans that a student wants for an award year before the institution credits the student's account with those loan funds; and

(ii) An institution is not required to return any loan proceeds that it disbursed directly to a student or parent.

(b) * * *

(1) If an institution obtains written authorization from a student or parent, as applicable, the institution may—

(i) Use the student's or parent's title IV, HEA program funds to pay for charges described in § 668.164(d)(2) that are included in that authorization; and

(ii) Except if prohibited by the Secretary under the reimbursement or cash monitoring payment method, hold on behalf of the student or parent any title IV, HEA program, funds that would otherwise be paid directly to the student or parent under § 668.164(e). Under this provision, the institution may issue a stored-value card or other similar device that allows the student or parent to access those funds at his or her discretion to pay for educationally related expenses.

* * * * *

■ 10. Section 668.166 is revised to read as follows:

§ 668.166 Excess cash.

(a) *General.* (1) The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan Program funds, that an institution does not disburse to students or parents by the end of the third business day following the date the institution—

(i) Received those funds from the Secretary; or

(ii) Deposited or transferred to its Federal account previously disbursed title IV, HEA program funds received from the Secretary, such as those resulting from award adjustments, recoveries, or cancellations.

(2) The provisions of this section do not apply to the title IV, HEA program funds that an institution receives from the Secretary under the just-in-time payment method.

(b) *Excess cash tolerances.* An institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. The institution must return immediately to the Secretary any amount of excess cash over the one-percent tolerance and any amount remaining in its account after the seven-day tolerance period.

(c) *Consequences for maintaining excess cash.* Upon a finding that an institution maintains excess cash for any amount or timeframe over that allowed in the tolerance provisions in paragraph (b) of this section, the actions the Secretary may take include, but are not limited to—

(1) Requiring the institution to reimburse the Secretary for the costs the Secretary incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment method or cash monitoring payment method described in § 668.163(d) and (e), respectively.

(Authority: 20 U.S.C. 1094)

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 11. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429 unless otherwise noted.

§ 674.2 [Amended]

■ 12. Section 674.2 is amended by:

■ A. In paragraph (a), adding to its list, in alphabetical order, the terms *Graduate or professional student, Half-time student,* and *Undergraduate student.*

■ B. In paragraph (b), removing the definitions for *Graduate or professional student*, *Half-time graduate or professional student*, *Half-time Undergraduate student*, and *Undergraduate student.*

§ 674.16 [Amended]

■ 13. Section 674.16 is amended by removing paragraph (g) and redesignating paragraphs (h) and (i) as paragraphs (g) and (h), respectively.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

■ 14. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

§ 676.2 [Amended]

■ 15. Section 676.2 is amended by:

■ A. In paragraph (a), adding to its list, in alphabetical order, the term *Undergraduate student.*

■ B. In paragraph (b), removing the definition for *Undergraduate student.*

§ 676.16 [Amended]

■ 16. Section 676.16 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 17. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

■ 18. Section 682.200 is amended by:

■ A. In paragraph (a)(1), adding to its list, in alphabetical order, the terms *Graduate and professional student, Half-time student,* and *Undergraduate student.*

■ B. In paragraph (b), removing the definitions for *Graduate or professional student, Half-time student,* and *Undergraduate student* and revising the definition of *Period of Enrollment.*

The revision reads as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Period of enrollment. The period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with one or more bona fide academic terms established by the school for which institutional charges are generally assessed (e.g., a semester, trimester, or quarter in weeks of instructional time, an academic year, or the length of the student's program of study in weeks of instructional time). The period of enrollment is also referred to as the loan period.

* * * * *

§ 682.207 [Amended]

■ 19. Section 682.207(e) is amended by removing the parenthetical ''(10)'' and adding, in its place, the parenthetical ''(8)''.

§ 682.208 [Amended]

■ 20. Section 682.208(f)(1)(iii)(A) is amended by removing the figure ''§ 682.604(d)(4)'' and adding, in its place, the figure ''34 CFR 668.21(a)(2)(ii)''.

■ 21. Section 682.603 is amended by:

■ A. Revising paragraph (f)(1).

■ B. Redesignating paragraphs (g), (h), and (i) as paragraphs (h), (i), and (j), respectively.

■ C. Adding a new paragraph (g).

■ D. In the introductory text of newly redesignated paragraph (h)(1) and the text of newly redesignated paragraph (h)(2), removing the parenthetical ''(10)'' and adding, in its place, the parenthetical ''(8)''.

The revision and addition read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(f)(1)(i) The minimum period of enrollment for which a school may certify a loan application is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or has terms that are substantially equal in length with no term less than nine weeks in length, a single term (e.g., a semester or quarter); or

(B) Except as provided in paragraphs (f)(1)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(*1*) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(*2*) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) For a student who transfers into a school with credit or clock hours from another school, and the prior school certified or originated a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may certify a loan for the remaining portion of the program or academic year. In this case the school may certify a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new program at the same school, the school may certify a loan for the remainder of the academic year. In this case the school may certify a loan for an amount that does not exceed the remaining balance of the student's annual loan limit at the loan level associated with the new program.

* * * * *

(g)(1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period.

* * * * *

■ 22. Section 682.604 is amended by:

■ A. Revising paragraph (c)(6).

■ B. Removing paragraphs (c)(7) and (c)(8).

■ C. Redesignating paragraphs (c)(9), (c)(10), and (c)(11) as paragraphs (c)(7), (c)(8), and (c)(9), respectively.

■ D. In newly redesignated paragraph (c)(9), removing the parenthetical ''(g)'' and adding, in its place, the parenthetical ''(h)''.

■ E. Revising paragraph (d)(3).

■ F. Removing paragraph (d)(4).

The revisions read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(6) Unless the provision of § 682.207(d) applies—

(i) If a loan period is more than one payment period, the school must deliver loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school must make at least two deliveries of loan proceeds during that payment period.

(A) For a loan certified under § 682.603(f)(1)(i)(A), the school may not make the second delivery until the calendar midpoint between the first and last scheduled days of class of the loan period; or

(B) For a loan certified under § 682.603(f)(1)(i)(B), the school may not make the second delivery until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

* * * * *

(d) * * *

(3) If a student does not begin attendance in the period of enrollment—

(i) Disbursed loan proceeds must be handled in accordance with 34 CFR 668.21; and

(ii) Undelivered loan funds held by the school must be handled in accordance with 34 CFR 668.167.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 23. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

■ 24. Section 685.102 is amended by:

■ A. In paragraph (a)(1), adding to its list, in alphabetical order, the terms *Full-time student*, *Graduate or professional student*, *Half-time student*, and *Undergraduate student*.

■ B. In paragraph (a)(3), removing from its list, the terms *Full-time student*, *Graduate or professional student*, and *Undergraduate student*.

■ C. In paragraph (b), removing the definition of *Half-time student* and revising the definition of *Period of enrollment*.

The revision reads as follows:

§ 685.102 Definitions.

* * * * *

(b) * * *

Period of enrollment: The period for which a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan is intended. The period of enrollment must coincide with one or more bona fide academic terms established by the school for which institutional charges are generally assessed (e.g., a semester, trimester, or quarter in weeks of instructional time; an academic year; or the length of the program of study in weeks of instructional time). The period of enrollment is also referred to as the loan period.

* * * * *

■ 25. Section 685.301 is amended by:

■ A. Redesignating paragraph (a)(9)(ii) as paragraph (a)(9)(iv).

■ B. Revising paragraph (a)(9)(i).

■ C. Adding new paragraphs (a)(9)(ii) and (iii).

■ D. Revising paragraphs (b)(2) and (b)(3).

■ E. Removing paragraphs (b)(5) and (b)(6).

■ F. Redesignating paragraphs (b)(7) and (b)(8) as paragraphs (b)(5) and (b)(6), respectively.

■ G. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

■ H. Adding a new paragraph (c).

The revisions and additions read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) * * *

(9)(i) The minimum period of enrollment for which a school may originate a Direct Loan application is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or has terms that are substantially equal in length with no term less than nine weeks in length, a single academic term (e.g., a semester or quarter); or

(B) Except as provided in paragraph (a)(9)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(*1*) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(*2*) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) For a student who transfers into a school with credit or clock hours from another school, and the prior school originated or certified a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may originate a loan for the remaining portion of the program or academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new program at the same school, the school may originate a loan for the remainder of the academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit at the loan level associated with the new program.

* * * * *

(b) * * *

(2) An institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraphs (b)(4) or (b)(8) of this section applies—

(i) If a loan period is more than one payment period, the school must disburse loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school must make at least two disbursements during that payment period.

(A) For a loan originated under § 685.301(a)(9)(i)(A), the school may not make the second disbursement until the calendar midpoint between the first and last scheduled days of class of the loan period; or

(B) For a loan originated under § 685.301(a)(9)(i)(B), the school may not make the second disbursement until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

* * * * *

(c) *Annual loan limit progression based on completion of an academic year.* (1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in

clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period.

* * * * *

■ 26. Section 685.303 is amended by revising paragraph (b)(3) to read as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

(3) If a student does not begin attendance in the period of enrollment, disbursed loan proceeds must be handled in accordance with 34 CFR 668.21.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

■ 27. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

§ 690.2 [Amended]

■ 28. Section 690.2 is amended by:

■ A. In paragraph (b), adding to its list, in alphabetical order, the terms *Half-time student, Three-quarter-time student,* and *Undergraduate student.*

■ B. In paragraph (c), removing the definitions for *Half-time student, Less-than-half-time student, Three-quarter-time student,* and *Undergraduate student.*

■ 29. Section 690.63 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 690.63 Calculation of a Federal Pell Grant for a payment period.

(a)(1) Programs using standard terms with at least 30 weeks of instructional time. A student's Federal Pell Grant for a payment period is calculated under paragraphs (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters; and

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(*1*) The institution starts its terms for different cohorts of students on a periodic basis (e.g., monthly);

(*2*) The program is offered exclusively in semesters, trimesters, or quarters; and

(*3*) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and re-enroll in a subsequent term.

* * * * *

(e) *Programs using credit hours without terms or clock hours.* The Federal Pell Grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining the student's Scheduled Federal Pell Grant using the Payment Schedule; and

(2) Multiplying the amount determined under paragraph (e)(1) of this section by the lesser of—

(i)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}};$$

or

(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

* * * * *

■ 30. Section 690.66 is amended by revising paragraph (a) to read as follows:

§ 690.66 Correspondence study.

(a) An institution calculates the Federal Pell Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

(1) Determining the student's annual award using the half-time Disbursement Schedule; and

(2) Multiplying the annual award determined from the Disbursement Schedule for a half-time student by the lesser of—

(i)

$$\frac{\text{The number of credit hours in the payment period}}{\text{The number of credit hours in the program's academic year}};$$

or

(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

* * * * *

§ 690.78 [Removed]

■ 31. Section 690.78 is removed and reserved.

* * * * *

PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS

■ 32. The authority citation for part 691 continues to read as follows:

Authority: 20 U.S.C. 1070a–1, unless otherwise noted.

§ 691.2 [Amended]

■ 33. Section 691.2 is amended by:

■ A. In paragraph (b), adding to its list, in alphabetical order, the term *Undergraduate student.*

■ B. In paragraph (d), removing the definition for *Undergraduate student.*

§ 691.8 [Amended]

■ 34. Section 691.8 is amended by removing paragraph (c).

■ 35. Section 691.63 is amended by:

■ A. Revising paragraphs (a)(1) and (e).

■ B. In paragraph (h)(2), removing the words '', and, for a credit-hour program, weeks of instructional time,'' and, adding in their place, the words '' and weeks of instructional time''.

The revisions read as follows:

§ 691.63 Calculation of a grant for a payment period.

(a)(1) *Programs using standard terms with at least 30 weeks of instructional time.* A student's grant for a payment period is calculated under paragraphs (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters; and

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(*1*) The institution starts its terms for different cohorts of students on a periodic basis (e.g., monthly);

(*2*) The program is offered exclusively in semesters, trimesters, or quarters; and

(*3*) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and re-enroll in a subsequent term.

* * * * *

(e) *Programs using credit hours without terms or clock hours.* The grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining that the student is attending at least full-time;

(2) Determining the student's ACG or National SMART Grant Scheduled Award; and

(3) Multiplying the ACG or National SMART Grant amount determined under paragraph (e)(2) of this section by the lesser of—

(i)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}};$$

or

(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

* * * * *

§ 691.78 [Removed]

■ 36. Section 691.78 is removed and reserved.

[FR Doc. E7–21083 Filed 10–31–07; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday,

November 1, 2007

Part IV

Federal Financial Institutions Examination Council

Joint Report to Congress, July 31, 2007; Economic Growth and Regulatory Paperwork Reduction Act; Notice

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Joint Report to Congress, July 31, 2007; Economic Growth and Regulatory Paperwork Reduction Act

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice.

SUMMARY: Pursuant to section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the Federal Financial Institutions Examination Council (FFIEC) is publishing a report entitled ''Joint Report to Congress, July 31, 2007, Economic Growth and Regulatory Paperwork Reduction Act'' prepared by its constituent agencies: The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Association (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies).

FOR FURTHER INFORMATION CONTACT:

OCC: Heidi Thomas, Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; or Lee Walzer, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Patricia A. Robinson, Assistant General Counsel, (202) 452–3005; or Michael J. O'Rourke, Counsel, (202) 452–3288; or Alexander Speidel, Attorney, (202) 872–7589, Legal Division; or John C. Wood, Counsel, Division of Consumer and Community Affairs, (202) 452–2412; or Kevin H. Wilson, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, (202) 452–2362, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Steven D. Fritts, Associate Director, Division of Supervision and Consumer Protection, (202) 898–3723; or Ruth R. Amberg, Senior Counsel, Legal Division, (202) 898–3736; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Karen Osterloh, Special Counsel, Regulations and Legislation Division, (202) 906–6639; or Josephine Battle, Program Analyst, Operation Risk, Supervision Policy, (202) 906–6870, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NCUA: Ross P. Kendall, Staff Attorney, Office of the General Counsel, (703) 518–6562, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: EGRPRA requires the FFIEC and the Agencies to conduct a decennial review of regulations, using notice and comment procedures, to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. 12 U.S.C. 3311(a)–(c). The FFIEC and the Agencies have completed this review and comment process.

EGRPRA also requires the FFIEC or the appropriate agency to publish in the **Federal Register** a summary of comments that identifies the significant issues raised and comments on these issues; and to eliminate unnecessary regulations to the extent that such action is appropriate. 12 U.S.C. 3311(d). The FFIEC also must submit a report to Congress that includes a summary of the significant issues raised and the relative merits of these issues, and an analysis of whether the appropriate agency is able to address the regulatory burdens associated with these issues by regulation or whether the burdens must be addressed by legislative action. 12 U.S.C. 3311(e). The attached report fulfills these requirements for the recently completed review of regulations. The text of the Joint Report to Congress, July 31, 2007, Economic Growth and Regulatory Paperwork Reduction Act, follows:

Preface [1]

Prudent regulations are absolutely essential to maintain rigorous safety and soundness standards for the financial services industry, to protect important consumer rights, and to assure a level-playing field in the industry. As a regulator, I clearly understand the need for well-crafted regulation.

However, outdated, unnecessary or unduly burdensome regulations divert precious resources that financial institutions might otherwise devote to making more loans and providing additional services for countless individuals, businesses, nonprofit organizations, and others in their communities. Over the years, Congress passed a variety of laws to deal with problems that have cropped up and the regulators adopted numerous regulations to implement those laws. In fact, over the past 17 years, the federal bank, thrift, and credit union regulators have adopted more than 900 rules. Accumulated regulation has reached a tipping point for many community banks and has become an important causal factor in recent years in accelerating industry consolidation.

In passing the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), Congress clearly recognized the need to eliminate any unnecessary regulatory burden. That is why Congress directed the Federal Financial Institutions Examination Council and its member agencies to review all existing regulations and eliminate (or recommend statutory changes that are needed to eliminate) any regulatory requirements that are outdated, unnecessary, or unduly burdensome.

As this comprehensive report makes clear, the agencies have worked diligently to satisfy the requirements of EGRPRA. Over a three-year period ending December 31, 2006, the agencies sought public comment on more than 130 regulations, carefully analyzed those comments (as indicated in this report), and proposed changes to their regulations to eliminate burden wherever possible.

In addition to obtaining formal, written comments on all of our regulations, the federal banking agencies hosted a total of 16 outreach sessions around the country involving more than 500 participants in an effort to obtain direct input from bankers, representatives of consumer/community groups, and many other interested parties on the most pressing regulatory burden issues.

Besides reviewing all of our existing regulations in an effort to eliminate unnecessary burdens, the federal banking agencies worked together to minimize burdens resulting from new regulations and current policy statements as they were being adopted. We also reviewed many internal policies in an effort to streamline existing processes and procedures. Finally, we have sought to communicate our regulatory requirements, policies and procedures more clearly to our constituencies to make them easier to understand.

On the legislative front, the federal banking agencies worked together, preparing and reviewing numerous legislative proposals to reduce regulatory burden, testifying before Congress on several occasions about the need for regulatory burden relief, and providing technical assistance to the staff of the Senate Banking Committee and the House Financial Services

[1] John M. Reich, Director of the Office of Thrift Supervision and the leader of the interagency EGRPRA program, wrote this Preface.

Committee on their regulatory relief bills. Congress ultimately passed, and the President signed into law, the Financial Services Regulatory Relief Act of 2006. As part of this process, the agencies, representatives of the industry, and consumer and community groups were asked to provide positions on the many legislative proposals that were submitted to Congress. The 2006 Act included a number of important regulatory relief provisions.

Financial institutions of all sizes suffer under the weight of unnecessary regulatory burden, but smaller community banks unquestionably bear a disproportionate share of the burden due to their more limited resources. While it is difficult to accurately measure the impact regulatory burden has played in industry consolidation, numerous anecdotal comments from bankers across the country as well as from investment bankers who arrange merger and acquisition transactions indicate it has become a significant factor. Accordingly, I am deeply concerned about the future of our local communities and the approximately 8,000 community banks under $1 billion in assets that represent 93 percent of the industry in terms of total number of institutions but whose share of industry assets has declined to approximately 12.5 percent, and whose share of industry profits have declined to approximately 11.2 percent (as of December 31, 2006).

Community banks play a vital role in the economic wellbeing of countless individuals, neighborhoods, businesses and organizations throughout our country, often serving as the economic lifeblood of their communities. Many of the CEOs of these institutions are concerned about their ability to profitably compete in the future, unless there is a slowdown in the growth of new banking regulations.

Ultimately, a significant amount of the costs of regulation are borne by consumers, resulting in higher fees and interest rates. If financial services are going to continue to be affordable, and in fact if we are going to be successful in bringing more of the unbanked into the mainstream, constant vigilance will be required to avoid the increasing costs resulting from the burden of accumulated regulations.

With every new regulation or policy imposed on the industry, I think it is important for Congress and the agencies to consider the regulatory burden aspects and to minimize those burdens to the extent possible. I want to take this opportunity to thank my colleagues at each of the agencies for their active support and participation on this interagency project. The staffs at each of the agencies devoted much time and energy to make sure we met not only the letter of the EGRPRA law, but the spirit as well. We look forward to continuing to work with Congress on these important issues and continuing to use the valuable information about regulatory burden issues that was shared with the agencies by the many participants in the EGRPRA process.

I. Joint Agency Report

A. Introduction

This report describes the actions by the Federal Financial Institutions Examination Council (FFIEC) and each of its member agencies: The Board of Governors of the Federal Reserve System (the Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (OTS), hereinafter ''the Agencies,'' [2] to fulfill the requirements of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Section 2222 of EGRPRA requires the Agencies to:

- Conduct a decennial review of their regulations, using notice and comment procedures, in order to identify those that impose unnecessary regulatory burden on insured depository institutions;
- Publish in the **Federal Register** a summary of comments received during the review, together with the Agencies' identification and response to significant issues raised by the commenters;
- Eliminate any unnecessary regulations, if appropriate; and
- Submit a report to Congress that discusses the issues raised by the commenters and makes recommendations for legislative action, as appropriate.

The Agencies have completed the first decennial review of their regulations. This report to Congress includes both the Agencies' comment summary and their discussion and analysis of significant issues identified during the EGRPRA review process. The report also describes legislative initiatives that would further reduce unnecessary regulatory burden on insured depository institutions, including, in some cases, references to current initiatives being considered by Congress. Separately, the Agencies have published in the **Federal Register** a summary of comments received, together with the Agencies' identification and response to significant issues raised by the commenters. Finally, since the inception of the EGRPRA review process in 2003, the Agencies have individually and collectively started a number of burden-reducing initiatives. This report describes those accomplishments.

Throughout the EGRPRA process, NCUA participated in the planning and comment solicitation process with the federal banking agencies. Because of the unique circumstances of federally insured credit unions and their members, however, NCUA established its own regulatory categories and publication schedule and published its notices separately. NCUA's notices were consistent and comparable with those published by the federal banking agencies, except on issues unique to credit unions. In keeping with this separate approach, the discussion of NCUA's regulatory burden reduction efforts and analysis of significant issues is set out separately in Part II of this report. The summary of comments received by NCUA is contained in Appendix II–B.

The Agencies' EGRPRA-mandated review coincided with work in the 109th Congress on regulatory relief legislation. Each Agency presented testimony to congressional oversight committees about priorities for regulatory burden relief and described the burden-reducing impact of legislative proposals that were under consideration by Congress. The Agencies' ongoing work on the EGRPRA review laid the foundation for them to achieve consensus on a variety of burden-reducing legislative proposals. A number of these proposals were enacted as part of the Financial Services Regulatory Relief Act of 2006 (FSRRA), which was signed into law on October 13, 2006.[3] Appendix I–A of this report highlights key burden-reducing provisions included in that legislation.

B. The Federal Banking Agencies' EGRPRA Review Process

1. Overview of the EGRPRA Review Process

Consistent with the requirements of EGRPRA, the federal banking agencies first categorized their regulations, and then published them for comment at regular intervals, asking commenters to identify for each of the categories regulations that were outdated, unnecessary or unduly burdensome.[4]

[2] In 2006, the State Liaison Committee, which represents state bank and credit union regulators, was added to the FFIEC as a voting member.

[3] Pub. L. 109–351.

[4] As noted above, the NCUA developed its own categories of regulations and published its notices

Continued

The 131 regulations were divided into 12 categories, listed below alphabetically:

- Applications and Reporting
- Banking Operations
- Capital
- Community Reinvestment Act
- Consumer Protection
- Directors, Officers and Employees
- International Operations
- Money Laundering
- Powers and Activities
- Rules of Procedure
- Safety and Soundness
- Securities

Semiannually, the federal banking agencies published different categories of regulations. The first **Federal Register** notice was published on June 16, 2003. It sought comment on the agencies' overall regulatory review plan as well as the following initial three categories of regulations for comment: Applications and Reporting; Powers and Activities; and International Operations.[5] The federal banking agencies requested public comment about the proposed categories of regulation, the placement of the rules within each category and the agencies' overall plan for reviewing all of their regulations.

The federal banking agencies adjusted the proposed publication schedule due to concerns raised that the consumer regulation category encompassed so many different regulations that it would prove too burdensome to respond adequately within the comment period timeframe. As a result, the agencies divided that category into two notices with smaller groups of regulations for review and comment.

There were a total of six **Federal Register** notices, each issued at approximately six-month intervals with comment periods of 90 days. In response to these comment requests, the agencies received more than 850 letters from bankers, consumer and community groups, trade associations and other interested parties.

There were numerous recommendations to reduce regulatory burden or otherwise improve existing regulations. Each recommendation was carefully reviewed and analyzed by the staffs of the appropriate federal banking agency or agencies to determine whether proposals to change specific regulations were appropriate.

To further promote public input, the federal banking agencies also co-sponsored 10 outreach sessions for bankers, as well as 3 outreach sessions for consumer and community groups, in cities around the country. The agencies then sponsored three joint banker and consumer/community group focus meetings in an effort to develop greater consensus among the parties on legislative proposals to reduce regulatory burden. (Please refer to Appendix I–B for a more complete discussion of the federal banking agencies' EGRPRA review process as well as a table indicating the timing and categories of regulations that were published for comment as part of the EGRPRA process.)

2. Significant Issues Arising From the EGRPRA Review and the Federal Banking Agencies' Responses

Section 2222 of EGRPRA requires a summary of the significant issues raised by the public comments and the Agencies' responses and comments on the merits of such issues and analysis of whether the Agencies are able to address the issues by regulation or whether legislation is required. Several significant issues received substantial federal banking agency support and were successfully included in the FSRRA during the 109th Congress. Below is a summary of the significant issues and relevant comments received by the federal banking agencies together with the banking agencies' recommendations.

a. Bank Secrecy Act/Currency Transaction Report

Issues:

(1) Should the $10,000 Currency Transaction Report (CTR) threshold be increased to some higher level?

(2) Can the CTR forms be simplified to require less information on each form?

(3) Should the existing CTR exemption process be revised to make it less burdensome on the industry, such as by adopting a ''seasoned customer'' exemption?

Context: The $10,000 threshold for filing CTRs has not changed since the requirement was first established by the Department of the Treasury some 30 years ago. Financial institutions are required to report currency transactions in excess of $10,000. These reports are filed pursuant to requirements implemented in rules issued by the Department of the Treasury and are filed with the Internal Revenue Service. In addition to the appropriate federal supervisory agency for the financial institution (including the Board, FDIC, OCC, and OTS), the Financial Crimes Enforcement Network (FinCEN), Federal Bureau of Investigation (FBI), and other federal law enforcement agencies use CTR data. The FBI and other law enforcement bodies have stated that CTR requirements serve as an impediment to criminal attempts to legitimize the proceeds of a crime. Moreover, they serve as a key source of information about the physical transfer of currency, at the point of the transaction.

Comments: Many of the written and oral comments received during the EGRPRA process reflected widespread concern that the reports' effectiveness had become degraded over time, because ever-larger numbers of transactions met or surpassed the threshold, resulting in growing numbers of CTR filings. Many commenters and participants in the outreach meetings expressed concern that, with the increased number of CTR filings, the federal banking and law enforcement agencies were not able to make effective use of the information being provided. Commenters noted that the low threshold for CTR filings created more regulatory burden for banks. One commenter noted that certain policies such as requiring banks to continue filing for exempt status for transactions between themselves were unnecessary.

Several commenters raised concerns about the burdens associated generally with the CTR process and the utility of the information that depository institutions must provide. To ease some of this burden, commenters urged the adoption of a broader ''seasoned customer'' exemption, as well as other reforms in the CTR process. The federal banking agencies received several comments about the difficulties of obtaining a CTR exemption under current procedures. Some bankers contended that it was easier for a bank to file a Suspicious Activity Report (SAR) than to undertake the determination that a customer qualified for an exemption from the CTR filing requirement. One commenter suggested that the Agencies grant exemptions through a one-time filing (and eliminate the yearly filing requirement).

Although the federal banking agencies received extensive comments on the burdens associated with the CTR filing process, there were no concrete suggestions as to what types of information were unnecessary in the context of a CTR filing. One commenter suggested that lowering the threshold would reduce duplicative paperwork burden, while another noted that the process of requesting an exemption from CTR reporting was too complicated. Another commenter suggested replacing

separately from the bank regulatory agencies. Details relating to its regulatory categories and its burden reduction efforts are set out Part II of this report. The summary of comments received by NCUA is attached as Appendix II–B of this report.

[5] 68 FR 35589.

daily CTR filings with monthly cash transaction reporting.

Current Initiatives: Congress recently enacted legislation that requires the Government Accountability Office (GAO) to conduct a study of the CTR process. Section 1001 of the FSRRA requires the Comptroller General of the United States to conduct a study and submit a report to Congress within 15 months of enactment of the legislation on the volume of CTRs filed. The FSRRA also requires the Comptroller General to evaluate, on the basis of actual filing data, patterns of CTRs filed by depository institutions of various sizes and locations. The study, which will cover a period of three calendar years before the legislation was enacted, will identify whether, and the extent to which, CTR filing rules are burdensome and can or should be modified to reduce burden without harming the usefulness of such filing rules to federal, state, and local anti-terrorism, law enforcement, and regulatory operations.

The study will examine the:

1. Extent to which financial institutions are taking advantage of the exemption system available;
2. Types of depository institutions using the exemption system, and the extent to which the exemption system is used;
3. Difficulties that limit the willingness or ability of depository institutions to reduce their CTR reporting burden by taking advantage of the exemption system;
4. Extent to which bank examination problems have limited the use of the exemption system;
5. Ways to improve the use of the exemption system, including making the exemption system mandatory so as to reduce the volume of CTRs unnecessarily filed;
6. Usefulness of CTR for law enforcement, in light of advances in information technology;
7. Impact that various changes in the exemption system would have on the usefulness of CTR; and
8. Changes that could be made to the exemption system without affecting the usefulness of CTR.

The study is to contain recommendations, if appropriate, for changes in the exemption system that would reflect a reduction in unnecessary costs to depository institutions, assuming a reasonably full implementation of the exemption system, without reducing the usefulness of the CTR filing system to anti-terrorism, law enforcement, and regulatory operations.

The GAO produced a report in April 2006 that looked at Bank Secrecy Act (BSA) enforcement and made three recommendations to improve coordination among FinCEN and the federal banking agencies:

1. As emerging risks in the money laundering and terrorist financing area are identified, the federal banking agencies and FinCEN should work together to ensure that these are effectively communicated to both examiners and the industry through updates of the interagency examination manual and other guidance, as appropriate;
2. To supplement the analysis of shared data on BSA violations, FinCEN and the federal banking agencies should periodically meet to review the analyses and determine whether additional guidance to examiners is needed; and
3. In light of the different terminology the federal banking agencies use to classify BSA noncompliance, FinCEN and the federal banking agencies should jointly assess the feasibility of developing a uniform classification system for BSA violations.[6]

The federal banking agencies have undertaken several initiatives that address the GAO's recommendations to improve coordination among the agencies and FinCEN regarding BSA enforcement, including the measures outlined below.

Under the auspices of the FFIEC BSA/Anti-Money Laundering (AML) Working Group, the federal banking agencies, FinCEN, and the Conference of State Bank Supervisors (CSBS) continue to meet monthly to address all facets related to BSA/AML policy, examination consistency, training, and issues associated with BSA compliance. Under the auspices of their General Counsels, the federal banking agencies have developed and published an Interagency Statement on Enforcement of BSA/AML Requirements to help ensure consistency among the agencies in BSA enforcement activities.[7] The federal banking agencies and FinCEN also work together to issue appropriate guidance to financial institutions on how to meet BSA/AML compliance requirements. One example of a joint product is the *FFIEC BSA/AML Examination Manual* that was issued to ensure consistency in BSA/AML examinations by providing a uniform set of examination procedures. The manual is a compilation of existing regulatory requirements, supervisory expectations, and sound practices in the BSA/AML area. The manual provides substantial guidance to institutions in establishing and administering their BSA/AML programs and is updated to incorporate emerging risks in the money laundering and terrorist financing area, as deemed appropriate by the federal banking agencies in consultation with FinCEN.[8] In addition, the federal banking agencies have individually and jointly held frequent outreach sessions for the industry to discuss such guidance and emerging issues.

Finally, as part of the legislative process leading up to the enactment of the FSRRA, Congress considered, but did not enact, other statutory proposals for CTR relief. The current Congress also is continuing to consider such initiatives and a bill to provide for a seasoned customer exemption from CTR filing (H.R. 323, the Seasoned Customer CTR Exemption Act of 2007) passed the House of Representatives on January 23, 2007. This is similar to a provision passed by the House in 2006.

The federal banking agencies continue to work with FinCEN, as the administrator of the BSA, to effectively oversee anti-money laundering compliance and ensure the safety and soundness of the financial institutions they regulate and to find ways to achieve these goals while eliminating unnecessary regulation. Recently, Secretary of the Treasury Paulson announced a Treasury initiative to administer the BSA in a more efficient and effective manner. The federal banking agencies will continue their close coordination with FinCEN to improve its communications with the industry. Moreover, the agencies will continue to work with Congress to analyze proposed legislative changes and provide recommendations and comments as requested.

Recommendation: The Board, FDIC, OCC, and OTS appreciate the comments received concerning the CTR exemption process. The federal banking agencies believe that any changes must be carefully balanced with the critical needs of law enforcement for necessary information to combat money laundering, terrorist financing, and other financial crimes. Any changes to the exemption process must not jeopardize or detract from law

[6] *See* "Bank Secrecy Act: Opportunities Exist for FinCEN and the Banking Regulators to Further Strengthen the Framework for Consistent BSA Oversight," Report to the Committee on Banking, Housing and Urban Affairs, U.S. Senate, U.S. Government Accountability Office, at pages 19–20 (April 2006).

[7] *See* Interagency Statement on Enforcement of Bank Secrecy Act/Anti-Money Laundering Requirements, July 19, 2007.

[8] The *FFIEC BSA/AML Examination Manual* was issued in 2005 and revised in 2006; further revisions are underway for issuance in August 2007.

enforcement's mission.[9] The federal banking agencies further believe that, in light of the attention and study given to this issue by Congress and in other forums, it would be premature to adopt changes in this area before the reports and recommendations are complete. Therefore, the agencies are not recommending any changes at this time but may do so once the GAO finalizes its report.

b. Anti-Money Laundering/Suspicious Activity Report

Issue: Should the federal banking agencies, together with FinCEN, revise or adopt policies relating to SARs to help reduce the number of defensive SARs that are being filed?

Context: Financial institutions must report known or suspected criminal activity, at specified dollar thresholds, or transactions over $5,000 that they suspect involve money laundering or attempts to evade the BSA. SARs play an important role in combating money laundering and other financial crimes.

Comments: Many commenters stated that SAR filing requirements were burdensome and costly. Some commenters complained that they filed numerous SARs and rarely, if ever, heard back from law enforcement. They questioned whether they were simply filing these forms into a ''black hole.'' One commenter noted that SAR filings make CTR filings redundant. Commenters complained both in writing and during the EGRPRA bankers' outreach meetings that the filing of SARs and the development of an effective SAR monitoring system add to compliance costs for banks and imposed a significant regulatory burden on them.

Current Initiatives: The federal banking agencies, in cooperation with FinCEN, seek to pursue effective SAR policies that contribute to efforts to track money laundering transactions while minimizing burden on regulated institutions that must file such reports. The federal banking agencies believe it is important to provide clear guidance to financial institutions on all SAR filing issues and will continue to work with FinCEN to do so.[10] In considering what further changes to make to SAR policies, it is important to closely coordinate with law enforcement so as not to undermine efforts to combat money laundering and curtail other illicit financial transactions.

As noted in the GAO's 2006 report on BSA oversight by the federal banking agencies, all of the Agencies have implemented extensive BSA/AML training for examiners, including joint training through the FFIEC.[11] The federal banking agencies have also stepped up their hiring of examiners to meet the need for greater BSA/AML compliance. The extensive training federal banking agencies have implemented has resulted in greater examiner expertise on BSA/AML matters.

In addition, the Department of the Treasury Inspector General directed FinCEN to undertake a SAR data quality review, which FinCEN subsequently shared with the federal banking agencies. The federal banking agencies indicated at the time that they found the analysis of the SAR filings to be useful in enabling financial institutions to address relevant problems or issues. FinCEN has publicly indicated that there is no evidence to suggest that the SAR filings include significant numbers of ''defensively filed'' SARs; rather, reviews show useful and properly filed reports.[12]

Recommendation: The federal banking agencies, along with FinCEN, seek to pursue effective SAR policies that contribute to efforts to track suspicious transactions while minimizing burden on regulated institutions that are required to file such reports. It is important to provide clear guidance to financial institutions on all SAR filing issues and to continue to work with FinCEN to do so. In considering what further changes to make to SAR policies, the Agencies believe that it is important to coordinate closely with law enforcement so as not to undermine efforts to combat money laundering and curtail other illicit financial transactions.

c. Patriot Act

Issues:

(1) Can the federal banking agencies provide greater guidance as to the types of identification that are acceptable under a bank's Customer Identification Program (CIP)?

(2) Can the recordkeeping requirements under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001[13] (PATRIOT Act) be revised to reduce burden?

Context: Department of the Treasury and federal banking agency regulations require depository institutions to obtain identification information from customers as a condition to opening/maintaining account relationships.[14] The regulation requires every depository institution to have a written CIP. The CIP must include risk-based procedures to enable the depository institution to form a reasonable belief that it knows the true identity of each customer. With respect to individuals, the regulation requires institutions to obtain, at a minimum, the name, date of birth, and address of the prospective customer, as well as an identification number, such as a tax identification number (for a U.S. person) or, in the case of a non-U.S. person, a tax ID number, passport number and country of issuance, alien registration number, or the number and country of any other identification number evidencing nationality or residence and containing a photograph of the individual or similar safeguard. For entities such as a corporation, the institution must also obtain a principal place of business, local office, or other physical location from the business applicant. The CIP must also contain procedures for verifying that the customer does not appear on a designated government list of terrorists or terrorist organizations. However, to date, the government has not designated such a list for purposes of CIP compliance.

The CIP regulations further require institutions to verify the identity of customers within a ''reasonable time'' after an account is opened. Institutions may conduct such verification through documents, non-documentary methods, or some combination of the two. An institution's CIP likewise must address situations where the institution is unable to verify a customer's identity.

Comments: During the EGRPRA process, the federal banking agencies received extensive comments

[9] The FBI has advised that to dramatically alter currency transaction reporting requirements—without careful, independent study—could be devastating and a significant setback to investigative and intelligence efforts relative to both the global war on terrorism and traditional criminal activities. Statement of Michael Morehart Section Chief, Terrorist Financing Operations, Counterterrorism Division, Federal Bureau of Investigation, before the Senate Committee on Banking, Housing and Urban Affairs, April 4, 2006; *see also,* Statement of Kevin Delli-Colli, Deputy Assistant Director, Financial & Trade Investigations Division, Office of Investigations, U.S. Immigration and Customs Enforcement, Department of Homeland Security, before the Senate Committee on Banking, Housing and Urban Affairs, April 4, 2006.

[10] For example, in 2007 FinCEN issued tips for SAR form preparation and filing that addressed a variety of issues, including what constitutes supporting documentation for a SAR. *See* ''SAR Activity Review, Trends, Tips & Issues,'' Issue 11, May 2007.

[11] *See* footnote 6, pages 50–59.

[12] *See* the prepared remarks of Robert W. Werner, Director, FinCEN, before the American Bankers Association/American Bar Association Money Laundering Enforcement Conference, October 9, 2006, available on FinCEN's Web site (*http://www.fincen.gov/werner_statement_10092006.html.*

[13] Pub. L. No. 107–56, October 26, 2001.

[14] *See generally* 31 CFR 103.121.

concerning the CIP under the PATRIOT Act. Many commenters noted the burden that the requirements impose on institutions and asserted that these requirements can cause inconvenience, even for long-time customers of a financial institution. Commenters had a number of suggestions for improved guidance, including: (1) Amending the definition of ''established customer'' to clarify that it refers to a customer from whom the bank has already obtained the information required by 31 CFR 103.121(b)(2)(i); (2) providing greater clarity about the types of identification that are acceptable; and (3) amending the definition of ''non-U.S. persons'' to refer only to foreign citizens who are not U.S. resident aliens.

The purpose of the CIP requirements is to aid in addressing both money laundering and terrorist financing. It can be crucial to have good records about the identity of customers in order to help prosecute cases involving money laundering or terrorist financing. Existing rules already contain detailed guidance about the types of identification that can be used to satisfy the requirements of the PATRIOT Act. In addition, the CIP does not apply to existing customers of the financial institution provided that the financial institution has a reasonable belief that it knows the true identity of the person.

With respect to recordkeeping requirements, the regulations issued pursuant to section 326 of the PATRIOT Act require institutions to keep records of their efforts to verify the identity of customers for five years after the account is closed. Many institutions commented during the EGRPRA process that this recordkeeping requirement was burdensome.

Current Initiatives: The federal banking agencies have worked in close collaboration with FinCEN in an effort to ensure that the requirements imposed by the PATRIOT Act are appropriate and necessary, and the agencies will continue to work with FinCEN to enhance the effectiveness of the Act's requirements while looking for ways to reduce the burden on financial institutions. For example, the federal banking agencies together with securities and futures industry regulators have worked to provide additional guidance on the application of the CIP rule. This guidance, in the form of frequently asked questions, has been updated as necessary to respond to industry questions and can be found on FinCEN's Web site (*http://www.fincen.gov/faqsfinalciprule.pdf*). The guidance that applies to depository institutions is also incorporated into the *FFIEC BSA/AML Examination Manual.*

Recommendation: While the federal banking agencies jointly issued the regulations at 31 CFR 103.121 with the Department of the Treasury, the agencies cannot unilaterally revise the regulation. While the agencies regularly discuss PATRIOT Act issues with their counterparts in FinCEN and the Department of the Treasury, the authority to amend many of the recordkeeping rules required under the PATRIOT Act is solely within the jurisdiction of the Department of the Treasury. Nonetheless, the comments will be a helpful contribution to the discussion of the issues.

d. Interest on Demand Deposits (Regulation Q) and NOW Account Eligibility

Issues:

(1) Should the prohibition against payment of interest on demand deposits be eliminated?

(2) Should the NOW account eligibility rules be liberalized?

Context: The prohibition against payment of interest on demand deposits is a statutory prohibition and an amendment enacted by Congress would be necessary to repeal the prohibition. Section 19(i) of the Federal Reserve Act provides that no bank that is a member of the Federal Reserve System may, directly or indirectly, by any device whatsoever pay any interest on any demand deposit. Similar statutory provisions apply to non-member banks and to thrift institutions. The Board's Regulation Q implements section 19(i) and specifies what constitutes ''interest'' for purposes of section 19(i). As a practical matter, the effect of section 19(i) is to prevent corporations and for-profit entities from holding interest-bearing checking accounts. This is because federal law separately permits individuals and non-profit organizations to have interest-bearing checking accounts, known as ''negotiable order of withdrawal,'' or NOW, accounts. (*See* 12 U.S.C. 1832.)

Comments: Several commenters suggested that the prohibition against the payment of interest on demand deposits be eliminated. One commenter stated that, if the statutory prohibition against payment of interest on demand deposits were repealed, the Board should allow a two-year phase-in period, during which depository institutions could offer MMDAs (savings deposits) with the capacity to make up to 24 preauthorized or automatic transfers per month to another transaction account.

Current Initiatives: For the past several years, Congress has considered, but not enacted, legislation that would repeal the prohibition in section 19(i) against the payment of interest on demand deposits. Some of this legislation also would have made certain changes with respect to NOW accounts.

Recommendation: The federal banking agencies support legislation that would repeal the prohibition against payment of interest on demand deposits in section 19(i) and related statutes. Such legislation would allow corporate and for-profit entities, including small businesses, to have the extra earning potential of interest-bearing checking accounts and would eliminate a restriction that currently distorts the pricing of checking accounts and associated bank services. The federal banking agencies, however, do not have a joint position at this time on whether to expand NOW account eligibility and, as such, are making no joint recommendation with respect to this issue. We will continue to work with Congress on these important matters.

e. Home Mortgage Disclosure Act (Regulation C)

Issues:

(1) Should the tests for coverage of financial institutions be changed to exempt more institutions from the reporting requirements of the Home Mortgage Disclosure Act (HMDA)? If so, how?

(2) Should revisions be made to the data that are required to be reported under HMDA, such as revising the reporting requirements for higher-priced loans?

Context: The purpose of HMDA is to provide the public with mortgage lending data to help determine whether financial institutions are serving the housing needs of their communities, assist public officials in distributing public sector investment so as to attract private investment to areas where it is needed, and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. HMDA requires banks, savings associations and credit unions that make ''federally related mortgage loans,'' as defined by the Board, to report data about their mortgage lending if they have total assets that exceed an asset threshold that is now set by statute (indexed for inflation in 2007 at $36 million) and a home or branch office in a metropolitan statistical area. Board Regulation C, which implements HMDA, clarifies that these institutions are subject to HMDA reporting for a given year if, in the preceding calendar year, they made at least one ''federally related mortgage loan,'' which is defined to be a home purchase loan or refinancing of a home purchase loan (1) made by an institution that is federally insured or regulated or (2) insured, guaranteed, or supplemented by a federal agency or (3) intended for sale to Fannie Mae or Freddie Mac. Each federal banking agency enforces the requirements of HMDA with respect to the institutions for which such agency is the primary federal supervisor.

Comments: Commenters have suggested revising the coverage tests for HMDA reporting requirements so that fewer institutions are subject to reporting, such as by raising the statutory asset test or exempting institutions that make only a *de minimis* number of mortgage loans in a year. Commenters asserted these changes could be made within the framework of HMDA, which provides the Board authority to make exceptions to the statute's requirements in certain circumstances. Moreover, the Board could also recommend that Congress consider making changes in the coverage tests that are not now authorized under HMDA.

Current Initiatives: With respect to whether revisions should be made to the data reporting requirements under HMDA, such as revising the reporting requirements for higher-priced loans, the Board completed a multi-year review of Regulation C in 2002. As part of this process, the Board considered numerous comments from the public on additional data to be reported under HMDA relating to the pricing of loans and ways to improve and streamline the data collection and reporting requirements of Regulation C. As a result of the review, the Board made several changes to HMDA reporting requirements, including adding reporting requirements for higher-priced loans. In determining whether to add each new data requirement, the Board carefully weighed what data would be most beneficial in improving HMDA analysis against the operational/compliance costs to industry in collecting the data. The revisions to Regulation C became effective on January 1, 2004.

Recommendation: Any expansion of the coverage tests that results in fewer institutions subject to HMDA reporting requirements would warrant a careful analysis that would include weighing the benefits of reduced reporting for institutions against the loss of HMDA data. The more financial institutions that are exempted from HMDA data reporting requirements, the more difficult it would be for the federal banking agencies, other government officials and interested parties to monitor and analyze aggregate trends in mortgage lending, and compare the mortgage lending of particular institutions to the mortgage lending of all other lenders in a given geographic area or product market. It would also be more difficult for supervisors to identify institutions, loan products, or geographic markets that show disparities in the disposition of loan applicants by race, ethnicity or other characteristics and that require further investigation under the fair lending laws.

It has been two years since institutions began reporting and disclosing data relating to the new reporting items. With so few years of reporting data available, it is too early to assess the effectiveness of the new data items and consider how the reporting requirements could be changed. Any changes would have to take into account both the burden on financial institutions and the benefits of the new data to policymakers and the public. The Board and other federal banking agencies will, however, carefully consider these issues after more experience has been gained with the new reporting requirements. Several statutory changes to HMDA reporting were considered by Congress as part of its consideration of the FSRRA, including proposals to expand the HMDA exemptions. While the federal banking agencies took differing positions on these proposals, all of the agencies recognize that any statutory changes to HMDA reporting must be carefully balanced to ensure that consumer protection and access to HMDA data for appropriate consumer purposes are not diminished.

f. Truth in Lending Act (Regulation Z)

Issues:

(1) Should the consumer disclosures required under the Truth in Lending Act (TILA), as well as those required under the Real Estate Settlement Procedures Act of 1974 (RESPA), be simplified in an effort to make them more understandable?

(2) Should the statutory right of rescission be eliminated for all home-secured lending or for certain transactions (such as refinancings with new creditors where no new money is provided or refinancings involving "sophisticated borrowers")? Alternatively, should consumers be able to more freely waive their three-day right of rescission for home-secured lending?

Consumer Loan Disclosures

Context: Ensuring that consumer disclosures, including those in mortgage transactions covered by TILA and RESPA, are effective and understandable is important in carrying out the purposes of the statutes. The volume of paperwork in such transactions has increased greatly due in part to reasons other than the required disclosures, such as liability-protection concerns of lenders. Nevertheless, it is essential to review the disclosure requirements periodically to consider whether disclosures are achieving their intended purposes. The Board's Regulation Z implements TILA, and each Agency enforces the requirements of TILA with respect to the institutions for which such agency is the primary federal supervisor.[15]

Comments: Regulation Z was one of the most heavily commented-upon regulations during the EGRPRA review process. A general comment from many industry commenters was that consumers are frustrated and confused by the volume and complexity of documents involved in obtaining a loan (especially a mortgage loan), including the TILA and RESPA disclosures. Some commenters acknowledged that the increased volume and complexity of loan documents also stemmed from lenders' attempts to address liability concerns. Many commenters requested that the required loan disclosures be provided in a manner that would facilitate consumer understanding of the loan terms. (For a more complete summary of the comments received, see the discussion of comments received for TILA/Regulation Z in Appendix I–C of this report.)

Current Initiatives: The Board is conducting a multi-stage review of Regulation Z, which implements TILA. In 2004, the Board issued an advance notice of proposed rulemaking (ANPR) requesting public comment on all aspects of the regulation's provisions affecting open-end (revolving) credit accounts, other than home-secured accounts, including ways to simplify, reduce or improve the disclosures provided under TILA.[16] The next stage of the review is expected to be a review of the disclosures for mortgage loan transactions (both open-end and closed-end) as well as other closed-end credit, such as automobile loans. The multi-stage review will consider revisions to the disclosures required under TILA to ensure that disclosures are provided to consumers on a timely basis and in a form that is readily understandable.

Recommendation: The federal banking agencies have all testified

[15] See Part II of this report for a discussion of comments submitted by credit unions to NCUA on this topic.

[16] *See* 69 FR 70925, December 8, 2004.

before Congress on the need to simplify and streamline consumer loan disclosures. Among other things, the Board's review will consider ways to address concerns about information overload, which can adversely affect how meaningful disclosures are to consumers. The Board will use extensive consumer testing to determine what information is useful to consumers to address concerns about information overload. After the Board's review and regulatory changes are in place, the agencies will consider what, if any, legislative changes may be necessary.

Revisions to the Right of Rescission

Context: Under TILA, consumers generally have three days after closing to rescind a loan secured by a principal residence. Among other things, the right of rescission does not apply to a loan to purchase or build a principal residence or a consolidation or refinancing with the same lender that already holds the mortgage on the residence and in which no new advances are being made to the consumer. The statute authorizes the Board to permit consumers to waive this right, but only to meet bona fide personal financial emergencies (*see* 15 U.S.C. 1635(d); 12 CFR 226.15(e) and 226.23(e)).

The right of rescission is intended to provide consumers a meaningful opportunity to fully review the documents given to them at a loan closing and determine if they want to put their home at risk under the repayment terms described in the documents. Thus, substantial revision to the statutory three-day right of rescission, either through allowing waivers more freely or exempting the requirement for some or all home-secured loans, would require careful study. Currently, consumers are presented with a substantial amount of documents at closing, and the final cost disclosures provided at closing may differ materially from earlier cost disclosures provided to the consumer. Under these circumstances, consumers may benefit by having the opportunity to review the terms and conditions of the loan after the loan closing. The three-day right of rescission is particularly important, and the ability to freely waive that right may potentially be more problematic, for loan products and borrowers who are more susceptible to predatory lending practices.

The three-day right of rescission plays an important role in protecting consumers, and this may be the case even in refinancings with new creditors where no additional funds are advanced. Refinancings occur for many reasons and may have terms that place the consumer's home more at risk. For example, to obtain a lower initial monthly payment, a consumer may refinance a 30-year fixed-rate, home-secured loan with a loan that has an adjustable rate, that provides for interest-only payments or a balloon payment, or that has a longer loan term. Depending on the consumer's circumstances, these changes may place the consumer's home more at risk or otherwise be less favorable to the consumer. If their refinancing is with a new creditor, consumers can use the three-day rescission period to review the terms of these loans. Therefore, even in a refinancing with no new funds advanced, the right to rescind a transaction with a new creditor can be important to consumers. Issues concerning the right of rescission will be considered in the course of the Regulation Z review discussed above.

Comments: Many industry commenters contended that the right of rescission was an unnecessary and burdensome requirement, and they suggested either eliminating the right of rescission or allowing consumers to waive the right more freely than under the current rule (which requires a bona fide personal emergency). Representatives of consumer and community groups called the right of rescission one of the most important consumer protections and urged the regulators not to weaken or eliminate that right.

Recommendation: The Board will consider issues concerning the right of rescission in the course of the Regulation Z review discussed above. In addition, in 2006 Congress considered regulatory burden relief proposals and ultimately enacted the FSRRA. At that time, suggestions were made to include amendments to TILA that would expand the circumstances under which a consumer could waive the three-day right of rescission. All of the federal banking agencies opposed or expressed concern about waiving this important consumer protection right without adequate safeguards to ensure that consumers are protected from the abuses that may occur from expanding the waiver authority.

g. Regulation O

Issue: While the FSRRA eliminated certain Regulation O reporting requirements, several commenters also asked whether the insider lending limits should be increased to parallel those permitted under some state laws.

Context: Sections 22(g) and 22(h) of the Federal Reserve Act impose various restrictions on extensions of credit by a member bank to its insiders. By statute, these restrictions also apply to nonmember state banks and savings associations. The Board's Regulation O implements sections 22(g) and 22(h) of the Federal Reserve Act for member banks. Regulation O governs any extension of credit by a member bank to an executive officer, director, or principal shareholder of (1) the member bank, (2) a holding company of which the member bank is a subsidiary, or (3) any other subsidiary of that holding company. Regulation O also applies to any extension of credit by a member bank to a company controlled by such a person and a political or campaign committee that benefits or is controlled by such a person. Each federal banking agency enforces the requirements of Regulation O with respect to the institutions for which such agency is the primary federal supervisor.

Section 22(g) of the Federal Reserve Act specifically prohibits a member bank from making extensions of credit to an executive officer of the bank (other than certain mortgage loans and educational loans) that exceed ''an amount prescribed in a regulation of the member bank's appropriate federal banking agency.'' Regulation O currently limits the amount of such ''other purpose'' loans to $100,000.

Comments: A number of industry commenters requested a review of Regulation O reporting and threshold requirements because they view them as overly burdensome and somewhat ambiguous, with outdated dollar amounts that need updating to reflect today's economy.

Recommendation: The federal banking agencies currently have the statutory authority to raise the limit on ''other purpose'' loans for institutions under their supervision if the federal banking agencies were to determine that such action was consistent with safety and soundness. In this regard, the Board plans to consult with the other agencies on a proposal to increase the Regulation O limit on other purpose loans as part of its upcoming comprehensive review of Regulation O.

h. Corporate Governance/Sarbanes-Oxley Act of 2002

Issues:

(1) Should banks that are not publicly traded and that have less than $1 billion in assets be exempt from the Sarbanes-Oxley Act of 2002[17] (SOX)?

(2) Should banks that comply with part 363 of the FDIC's rules be exempt from section 404 of SOX?[18]

(3) Should the exemption for compliance with the external

[17] Pub. L. 107–204, July 30, 2002.

[18] 15 U.S.C. 7262.

independent audit and internal control requirements of 12 CFR 363 be raised from $500 million to $1 billion?

Context: SOX was enacted to improve corporate governance and financial management of public companies in order to better protect investors and restore investor confidence in such companies. Section 404 of SOX applies directly to public companies only, including insured depository institutions and their parent holding companies that are public companies, and indirectly to institutions that are subsidiaries of holding companies that are public companies. Section 404 of SOX does not apply to institutions that are not ''publicly traded,'' such as nonpublic companies or subsidiaries of nonpublic companies. Section 404 of SOX requires the management and external auditors of all public companies to assess the effectiveness of internal controls over the company's financial reporting.

Part 363 of the FDIC's regulations establishes annual audit and reporting requirements for all insured depository institutions with $500 million or more in total assets. Part 363 requires all insured depository institutions with $500 million or more to have an annual audit of their financial statements conducted by an independent public accountant (external auditor). Part 363 also requires that the management and external auditors of institutions with $1 billion or more in total assets attest to internal controls over financial reporting. To be considered ''independent,'' Guideline 14 to part 363, which was adopted by the FDIC in 1993, states that the external auditor ''should be in compliance with the [American Institute of Certified Public Accountants'] Code of Professional Conduct and meet the independence requirements and interpretations of the [Securities and Exchange Commission] and its staff.'' Title II of SOX imposed additional auditor independence requirements on external auditors of public companies, which the Securities and Exchange Commission (SEC) has implemented through rulemaking. Thus, the external auditors of nonpublic institutions that are subject to part 363 are expected to comply with SOX's auditor independence requirements and the SEC's implementing rules.

Comments: Some commenters focused on the increased burden and costs imposed on public companies by SOX, particularly publicly traded community banks. Several commenters recommended requiring such banks to comply only with part 363 and not with SOX section 404. Other commenters were concerned about the burden placed on banks to comply with the auditor independence requirements in SOX under the FDIC's rules for those banks that are not publicly traded and have less than $1 billion in assets. These commenters believed that such requirements make it difficult for banks in small communities to find professionals to help comply with the requirements.

Current Initiatives: On March 5, 2003, the FDIC issued Financial Institution Letter (FIL) 17–2003 to provide guidance to institutions about selected provisions of SOX, including the actions the FDIC encourages institutions to take to ensure sound corporate governance. On May 6, 2003, the Board, OCC, and OTS collectively issued similar guidance entitled ''Statement on Application of Recent Corporate Governance Initiatives to Non-Public Banking Organizations.'' None of the federal banking agencies established any new mandates for nonpublic institutions as a result of SOX.[19] In the 2003 guidance, the federal banking agencies encouraged nonpublic institutions to follow the sound corporate governance practices that the Agencies have long endorsed. In addition, the federal banking agencies encouraged all nonpublic institutions to periodically review their policies and procedures relating to corporate governance and auditing matters. These reviews should ensure that policies and procedures are consistent with applicable law, regulations, and supervisory guidance and appropriate to the institution's size, operations, and resources.

Recommendations:

Banks That Are Not Publicly Traded and Have Less Than $1 Billion in Assets. As discussed above, SOX generally does not apply to banks of any size that are not publicly traded or owned by a publicly traded company. Because SOX did not impose any new mandates on nonpublic institutions that have less than $1 billion in assets, the federal banking agencies do not believe any action on this matter is necessary.

Relationship between Part 363 of the FDIC's Rules and Section 404 of SOX. The SEC rules implementing the section 404 requirements took effect at year-end 2004 for ''accelerated filers,'' i.e., generally, public companies whose common equity has an aggregate market value of at least $75 million, but these rules will not take effect until 2007 for public companies that are ''non-accelerated filers.'' Section 404 does not explicitly authorize the SEC to exempt any public companies from its internal control requirements.

Section 36 of the FDI Act, which was enacted more than 10 years before SOX, imposes annual audit and reporting requirements on certain insured depository institutions. These requirements, as implemented by part 363 of the FDIC's regulations, include assessments of the effectiveness of internal control over financial reporting by management and external auditors. Section 36 of the FDI Act authorizes the FDIC to set the size threshold at which institutions become subject to the audit and reporting requirements of section 36, provided the threshold is not less than $150 million in assets. In November 2005, the FDIC, after consulting with the other federal banking agencies, amended part 363 to require internal control assessments by management and external auditors only of insured depository institutions, both public and nonpublic, with $1 billion or more in total assets.

Part 363 applies to insured depository institutions, but section 404 applies to public companies, which, in most cases, is the parent holding company of a depository institution rather than the depository institution itself. If certain conditions are met, part 363 permits an institution to satisfy the requirement for internal control assessments by management and external auditors at the holding company level. However, when satisfied at the holding company level, part 363 provides that the internal control assessments need only cover ''the relevant activities and operations of those subsidiary institutions within the scope'' of the regulation, such as those subsidiary depository institutions with $1 billion or more in total assets. In contrast, internal control assessments performed under section 404 must cover the entire consolidated organization, including any insured depository institution subsidiaries with less than $1 billion in total assets and subsidiaries that are not depository institutions.

The FDIC and the other federal banking agencies have no authority to exempt institutions that comply with the internal control requirements of part 363 from the internal control requirements of section 404, which the SEC administers. Legislation that amends section 404 would be needed to create such an exemption (unless the SEC were to determine that it had the authority to do so). Moreover, in considering whether or how to craft

[19] The auditor independence provisions of part 363, which dated back to 1993 and envisioned auditor compliance with the SEC's independence requirements as they might change from time to time, did not constitute a new mandate for nonpublic institutions with $500 million or more in total assets.

such an exemption, one would need to recognize and take into account the fact that part 363 internal control assessments by management and external auditors are required to be performed only by insured depository institutions and not on a consolidated basis at the parent holding company level. In connection with consideration of proposals to be included in the FSRRA, one proposal would have exempted financial institutions with assets of less than $1 billion from section 404 if subject to section 36 of the FDI Act. The federal banking agencies had differing views on the advisability of such an amendment and will continue to work with Congress to look for ways to reduce burden while ensuring that adequate internal control requirements are in place.

Furthermore, because insured institutions with less than $1 billion in total assets that are public companies, or subsidiaries of public companies, are not subject to the part 363 internal control requirements, such institutions would not benefit from an exemption from the section 404 internal control requirements that would apply to institutions that comply with the part 363 internal control requirements.

Asset Threshold for the External Independent Audit and Internal Control Requirements of 12 CFR 363. Part 363 of the FDIC's regulations, which implements the annual audit and reporting requirements of section 36 of the FDI Act, requires each insured depository institution with $500 million or more in total assets to have an annual audit of its financial statements by an independent public accountant (external auditor). Section 36 and part 363 also require assessments of the effectiveness of internal control over financial reporting by an institution's management and external auditor. In November 2005, the FDIC's Board of Directors amended part 363 to raise the asset size threshold for these internal control assessments from $500 million to $1 billion.

In developing its proposal to amend the asset size threshold for internal control assessments to $1 billion in 2005, the FDIC, in consultation with the other federal banking agencies, considered whether the threshold should also be increased for the audited financial statement requirement in part 363. The longstanding policy of each of the federal banking agencies has been to encourage all insured depository institutions, regardless of size or charter, to have an annual audit of their financial statements performed by an independent public accountant. When auditing financial statements, the institution's external auditor must obtain an understanding of internal control, including assessing control risk, and must report certain matters regarding internal control to the institution's audit committee. The FDIC and other agencies concluded that raising the asset size threshold for audited financial statements under part 363 would not be consistent with the objective of section 36, such as early identification of needed improvements in financial management. In this regard, the FDIC decided that relieving institutions with between $500 million and $1 billion in total assets from the internal control assessment requirement of part 363 while retaining the financial statement audit requirement for all insured institutions with $500 million or more in assets would continue to accomplish the objective of section 36 in an appropriate manner.

Therefore, the FDIC does not currently plan to raise the asset size threshold for the financial statement audit requirement in part 363 from $500 million to $1 billion.

i. Flood Insurance

Issues: Should the flood insurance requirements be reduced to cover fewer loans such as by increasing the small-loan exemption threshold (currently $5,000), or exempting loans on certain properties without residences such as properties with only barns, storage sheds, or dilapidated, non-residence structures?

Context: Under the National Flood Insurance Act, as amended, federally regulated lenders may not make, increase, extend, or renew any loan secured by a building or mobile home located or to be located in a special flood hazard area in which flood insurance is available under the Act unless the building or mobile home and any personal property securing the loan is covered by adequate flood insurance for the term of the loan. These requirements do not apply to property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

Comments: During the EGRPRA process, a number of commenters suggested that the statutory exception for requiring flood insurance for small loans be raised from its current level of $5,000. Commenters also asserted that flood insurance should not be required for certain types of properties such as properties with barns, storage sheds or dilapidated structures.

Current Initiatives: Congress has been working on legislation to reform the National Flood Insurance Program (NFIP) to address the weaknesses in the program that became more apparent from hurricane disasters that severely impacted the United States in the last few years. HR 4973 passed the House of Representatives during the 109th Congress and was under consideration by the Senate when the 109th Congress adjourned. This bill would have:

- Increased penalties for noncompliance with flood insurance requirements,
- Increased the maximum coverage limits,
- Allowed for greater premium increases,
- Increased the Federal Emergency Management Agency's (FEMA) borrowing authority, and
- Directed FEMA to establish an ongoing program to review, update, and maintain flood maps and elevation standards.

This legislation has been re-introduced in the 110th Congress.

Recommendation: The federal banking agencies believe that Congress should consider the suggested changes to the flood insurance requirements as part of the continuing efforts of Congress to comprehensively reform the NFIP to address several critical issues. The agencies will continue to work with Congress as appropriate to review and provide comments on legislative proposals to amend the NFIP.

j. Expedited Funds Availability (Regulation CC)

Issues:

(1) Should the general availability schedules for local and nonlocal checks be reviewed to determine if they are still appropriate?

(2) Should the maximum hold period for some items that currently receive next-day availability, particularly official bank checks and government checks, be extended to prevent fraud?

(3) Should the parameters of the large deposit, new account, and reasonable cause exceptions be adjusted?

Context: Under the Expedited Funds Availability Act (EFA Act) as implemented by the Board's Regulation CC, a bank generally must make an amount deposited by check available for withdrawal on the first, second, or fifth business day after deposit, depending on the characteristics of the deposit. Under the next-day availability provision, deposits by cashier's checks, teller's checks, and certified checks (collectively, official bank checks) and by U.S. Postal Service (USPS) money orders, Treasury checks, and other types of checks drawn on units of federal or state government (collectively, government checks) typically are entitled to next-day availability if deposited in the payee's account by the payee in person to a bank employee. If a check is not subject to the next-day availability provision, its general availability is determined under the availability schedule for local and nonlocal checks. Local checks typically are entitled to availability no later than the second business day after deposit and nonlocal checks typically are entitled to availability no later than the fifth business day after deposit. The next-day availability schedule and the local/nonlocal schedule (collectively, the generally applicable availability schedule) thus establish the maximum time that banks generally may wait before making a deposit available for withdrawal (the generally applicable hold period).

Banks may choose to give faster availability than the generally applicable availability schedule requires. They may also withhold availability for checks for an additional reasonable period beyond the generally applicable hold period by invoking what commonly is called an exception hold. The six reasons for invoking an exception hold, which are specified in detail in the EFA Act and Regulation CC, are that the account is new, the aggregate amount of a deposit by one or more checks on any one banking day exceeds $5,000, the bank has reasonable cause to doubt that it can collect the check, the account to which the deposit is made has been repeatedly overdrawn, the check in question previously was returned unpaid, or emergency conditions exist. Each federal banking agency enforces the requirements of EFA Act and Regulation CC with respect to the institutions for which such agency is the primary federal supervisor.

Comments: Many commenters addressed issues concerned with the EFA Act and Regulation CC. The most frequent comment related to increases in fraud associated with items for which banks must give next-day or second-day funds availability, particularly official bank checks, postal money orders, and other items drawn on governmental units. Many of these commenters suggested increasing the maximum hold time for these items to provide more time for notice to be given to a bank of the fraud. Other commenters discussed increasing the hold time for other deposits, the need to streamline the disclosures given to customers, and other miscellaneous comments.

Current Initiatives: As check clearing times improve, the EFA Act requires the Board, by regulation, to reduce the maximum hold periods that apply to local checks, nonlocal checks, and checks deposited at nonproprietary ATMs to the period of time that it reasonably takes a depository bank to learn of the nonpayment of most items in each of those categories. The Check Clearing for the 21st Century Act (Check 21 Act) specifically requires the Board to conduct a study to assess the impact of the Check 21 Act on the use of electronics in the check clearing process, check clearing and funds availability times, check-related losses, and the appropriateness of the existing availability schedules. The results of the Board's study are discussed in the Board's April 2007 report to Congress. The Board found that check collection and return times have not improved enough to warrant the Board changing the existing availability schedules by rule at this time. The Board also provided Congress with information relating to banks' actual funds availability practices, check-related losses, and the amount limits set forth in the EFA Act. The information in the Board's report should assist Congress in determining the appropriateness of any statutory changes to the EFA Act at this time.

With respect to extending the maximum hold period for some items that currently receive next-day availability, the EFA Act specifically requires next-day availability for the items listed in the next-day availability schedule, including official bank checks and government checks, when the specified statutory criteria for next-day availability are met. Although the EFA Act authorizes the Board to shorten the availability times for local and nonlocal checks and checks deposited at nonproprietary ATMs, the EFA Act does not specifically give the Board the authority to lengthen (or shorten) the maximum generally applicable hold periods for items subject to the next-day availability schedule. In addition, by the terms of the EFA Act, the reasonable cause to doubt collectibility exception for placing an exception hold on a check may not be invoked simply because the check is of a particular class.

Recommendation: Although the Board may suspend the application of any provision of the EFA Act for a class of checks to prevent fraud losses, such a suspension is limited to 45 business days and requires both a finding by the Board that suspension of the EFA Act's requirements is necessary to diminish the fraud and a report to Congress concerning the reasons and evidence supporting the Board's action. In light of these considerations and limitations, the ongoing relief sought by commenters would require a statutory change. The federal banking agencies, however, are taking actions to respond to the increase in the number of fraudulent official checks.

Information in the Board's report indicates that, although check-related losses sustained by banks have risen somewhat in the last decade, checks that receive next-day availability are associated with only around 10 percent of those losses and thus are not the source of most bank check-related losses. The other information in the Board's report should assist policy makers in determining whether statutory adjustments to the next-day availability provisions would be appropriate.

With respect to adjusting the parameters of the large deposit, new account, and reasonable cause exceptions, it should be noted that these parameters are specified by the EFA Act, and adjusting them therefore would require a statutory change. Streamlining and simplifying the requirements under the EFA Act was an issue that was raised when Congress considered regulatory burden proposals during its work last year on the FSRRA. The Board's report of its most recent check collection study includes, among other things, an assessment of both the time periods and dollar thresholds that apply to the safeguard exceptions, including but not limited to the large deposit and new account exceptions. The results of that study should assist policy makers in determining the appropriateness of adjusting the current parameters of the exception holds and provide guidance to the federal banking agencies to determine whether to recommend legislative changes to eliminate unnecessary burden that may be imposed by statutory requirements.

k. Powers and Activities

Issues:

(1) Should existing consumer and commercial lending limits for savings associations be increased?

(2) Should bank holding companies that are not financial holding companies be able to conduct a broad scope of insurance agency activities directly or through a nonbanking subsidiary?

(3) Should the Federal banking agencies issue a joint rule to clarify interest rate exportation guidelines?

Consumer and Commercial Lending Limits for Savings Associations

Context: The Home Owner's Loan Act (HOLA) currently subjects a Federal savings association to a 35 percent of assets limitation for secured consumer loans while imposing no statutory limit on the amount of unsecured credit card lending. This limit exists even though the proceeds of the loan may be used for the exact same purpose. With respect to commercial loans, HOLA currently caps aggregate commercial loans other than small business loans at 10 percent of a savings association's assets, and permits commercial lending, including small business lending, up to 20 percent of assets.

Comments: During the EGRPRA review process, several commenters urged OTS to increase consumer and commercial lending limits. One asserted that savings associations are developing business strategies that require more flexible consumer loan limits. Another commenter suggested that small business lending limits be increased to 20 percent of assets to help increase small business access to credit and expand the amount of loans made to small and medium-sized businesses.

Current Initiatives: When Congress was working on the FSRRA last year, there were some amendments that OTS strongly supported that would have amended HOLA to ease the consumer and commercial limits for savings associations. OTS will suggest these amendments again when Congress considers new regulatory burden relief initiatives.

Recommendation: OTS is committed to continuing to work with Congress next year on easing consumer and commercial lending limits for savings associations.

Insurance Agency Activities

Context: Sections 4(c)(8) and (k) of the Bank Holding Company Act (BHC Act), as amended by the Gramm-Leach-Bliley Act of 1999 (GLBA), do not permit the Board to expand the list of nonbanking activities that are permissible for bank holding companies that have not qualified to be a ''financial holding company'' beyond those activities that the Board determined, by regulation or order, were ''closely related to banking'' as of November 11, 1999. As a result, a bank holding company that does not elect to become a financial holding company is permitted to engage only in those nonbanking activities that the Board had determined were permissible under section 4(c)(8) as of that date.

Prior to the enactment of the GLBA, bank holding companies were permitted under section 4(c)(8)to engage in general insurance brokerage activities only in a ''place of 5,000.'' A similar place of 5,000 limit applies to the general insurance brokerage activities of national banks and their subsidiaries. The GLBA amended the law to allow subsidiaries of bank holding companies that qualify as financial holding companies and financial subsidiaries of national banks that qualify to have financial subsidiaries to engage in general insurance agency activities without the place of 5,000 requirement.

Comments: Several commenters, including industry trade associations, supported allowing a bank holding company to conduct an expanded scope of insurance agency activities directly or through a nonbanking subsidiary.

Current Initiatives: When Congress was considering proposals to be included in the FSRRA, legislation was suggested, but was not enacted, that would have allowed all bank holding companies to provide insurance as agent without the place of 5,000 requirement or would have amended the BHC Act to permit the Board to expand permissible activities for bank holding companies. The Board reiterated its support of these proposals in testimony on regulatory relief in March 2006.[20] In addition, legislation was suggested that would have permitted national banks to engage in a full range of insurance agency activities without the place of 5,000 restriction. The OCC expressed its support for making this change for national banks.

Recommendation: The Board is statutorily prevented from authorizing bank holding companies that are not financial holding companies to engage in a full range of insurance agency activities without the place of 5,000 requirement. Currently, bank holding companies that do not become a financial holding company may engage only in very limited insurance sales activities (primarily involving credit-related insurance) outside such small places. Similar restrictions apply to national banks, and national banks cannot engage in a full range of insurance agency activities without the place of 5,000 restriction except through a financial subsidiary. As noted above, the Board and the OCC support certain changes to the current restrictions on the insurance agency activities of bank holding companies and national banks, respectively. The federal banking agencies will work with Congress on these issues to support appropriate burden relief for the industry from the current restrictions on these agency activities.

''Exportation'' of Interest Rates

Context: Federal statutes permit the ''exportation'' of interest rates and fees for federally insured depository institutions and their operating subsidiaries from any state in which the institution is located, except federal credit unions, which are subject to a federal usury ceiling.[21] While the applicable federal laws are substantially similar, the federal banking agencies have implemented or interpreted these provisions, or are considering doing so, through different avenues.

Comments: One commenter recommended that the federal banking agencies clarify that financial institutions could use their home state interest rates regardless of the contacts (or lack thereof) between the home state and the loan. The commenter indicated that the federal banking agencies should further clarify the factors that need to be considered when the rate of a state other than the home state is used. The commenter said that the federal banking agencies should issue a new joint rule to clarify these issues. According to the commenter, the federal banking agencies also should review their interpretations concerning what constitutes ''interest'' under the export doctrine, to ensure consistency.

Initiatives: The OCC has issued regulations and interpretations that apply to national banks and their operating subsidiaries.[22] In addition, there are Supreme Court decisions dealing with national banks' exportations of rates and fees.[23] OTS similarly has issued regulations in this area for federal and state thrifts.[24] In March 2005, the FDIC held a hearing on a proposal that includes a request to codify the FDIC's interpretations of the interest rates charged by state banks in interstate lending transactions. In October 2005, the FDIC issued a proposed rule that includes a proposed codification.[25] Federal court decisions have also addressed the ability of state banks to ''export'' interest rates under 12 U.S.C. 1831d.[26]

Recommendation: In light of the actions taken or already under consideration by the federal banking agencies in this area, they do not believe joint rulemaking on this subject is needed.

l. Capital

Issue: Should the federal banking agencies permit an opt-out for highly

[20] *See* Testimony of Governor Donald L. Kohn before the Committee on Banking, Housing, and Urban Affairs, dated March 1, 2006.

[21] *See* 12 CFR 701.21(c)(7)). See 12 U.S.C. 85 (national banks); 1463(g) (federal and state thrifts); 1831d (state banks); 1785(g) (federal and state credit unions *but see* discussion above concerning federal credit union usury limits).

[22] *See* 12 CFR 7.4001, 7.4006, Interpretive Letter 954, February 2003.

[23] *See, e.g., Marquette National Bank of Minneapolis* v. *First of Omaha Service Corp.*, 439 U.S. 299 (1978); *Smiley* v. *Citibank (South Dakota), N.A.*, 517 U.S. 735 (1996).

[24] *See* 12 CFR 560.110.

[25] *See* 70 FR 60019.

[26] *See Greenwood Trust Co.* v. *Commonwealth of Mass.,* 971 F. 2d 818 (1st Cir. 1992).

capitalized community banks from the proposed revisions to Basel I to allow them to continue to use existing capital rules?

Context: On September 25, 2006, the Board, FDIC, OTS, and OCC issued a notice of proposed rulemaking (NPR) for the advanced approaches of the Basel II capital framework. The Basel II capital framework is designed to ensure that capital regulations appropriately address existing and emerging risks; the agencies recognize that the current Basel I framework no longer does so with respect to the largest, most sophisticated banks. Although the advanced approaches of the Basel II capital framework are quite complex, only a relatively small number of the largest and most internationally active banks, savings associations, and bank holding companies (banking organizations) will be required to apply the framework.

The federal banking agencies also issued a proposed revision to Basel I in December 2006, which is commonly known as Basel IA. The primary goal of this initiative was to increase the risk sensitivity of the existing capital rules without unduly increasing regulatory burden. The Basel IA proposal provided that, except for those banking organizations that may be required to apply the Basel II capital framework, banking organizations would have the option of adopting the proposed Basel IA revisions or continuing to determine capital under the existing risk-based capital rule. The regulators reserved the authority under the proposed rules to mandate a particular framework for a particular institution, depending on the risk profile and activities of a particular institution.

Comments: During the EGRPRA process, the federal banking agencies received relatively few comments concerning capital issues, as the **Federal Register** notice advised that comments concerning capital would be gathered and considered in connection with the capital rulemaking process. Nevertheless, among those who did comment, there was some concern that banking regulators' efforts to revise capital rules could prove to be overly burdensome for smaller banks and difficult to implement. Some of those commenters proposed that highly capitalized community banks be allowed to opt out from the proposed revisions to Basel I and continue to use the existing Basel I risk-based capital framework. Commenters to the Basel IA and Basel II proposals urged the agencies to adopt the Basel II so-called ''standardized'' approach. The standardized approach is, in part, a set of modifications to the Basel I framework that modestly enhances overall risk sensitivity. On July 20, 2007, the agencies issued a press release stating their intention to issue a proposed rule that would provide those banking organizations not required to adopt the Basel II framework an option to adopt a Basel II-based standardized approach. The press release noted that this new proposal would replace the Basel IA option.

Recommendation: The agencies have stated their intention to make the standardized proposal optional. Banking organizations in most cases would have the option of selecting the regulatory capital framework—the existing Basel I rules or the standardized approach or the Basel II advanced approaches. Thus, the federal banking agencies believe that potential revisions to the Basel I capital rules do not create undue regulatory burden for most banking organizations, including highly capitalized community banks.

m. Community Reinvestment Act ''Sunshine Rules''

Issue: Should the Community Reinvestment Act (CRA) Sunshine rules be repealed?

Context: Section 711 of the GLBA added a new section 48 to the Federal Deposit Insurance Act (12 U.S.C. 1831y), entitled ''CRA Sunshine Requirements,'' which has been implemented by regulations adopted by each federal banking agency.[27] This section requires nongovernmental entities or persons, depository institutions, and affiliates of depository institutions that are parties to certain agreements that are in fulfillment of the CRA to make the agreements available to the public and the appropriate agency and to file annual reports concerning the agreements with the appropriate agency. The types of agreements that could be covered by the statute include:

- Written agreements providing for cash payments, grants, or other consideration (except loans) with an aggregate value in excess of $10,000 in a calendar year; or
- Loans to one or more individuals or entities (whether or not parties to the agreement) that have an aggregate principal amount of more than $50,000 in any calendar year.

Comments: During the EGRPRA review process, both bankers and community advocates supported repeal of these requirements. Bankers generally commented that the burden of compliance outweighs any benefit of the reporting requirements. Community advocates expressed concern about the government's monitoring the amount of funding they receive as a result of bank efforts to fulfill CRA obligations.

Recommendation: All of the federal banking agencies supported repeal of these statutory requirements last year when Congress was considering regulatory burden relief proposals to include in the FSRRA. This change would reduce regulatory burden on depository institutions, nongovernmental entities (such as consumer groups) and other parties to covered agreements as well as the agencies.

n. Equal Credit Opportunity Act (Regulation B)

Issues:

(1) Should the federal banking agencies provide additional guidance on fair lending issues, such as when two individuals demonstrate sufficient evidence that they are applying jointly for credit so the creditor may require the signature of both individuals?

(2) Should the requirements for ''adverse action'' notices under the Equal Credit Opportunity Act (ECOA) be changed to make it easier to determine the circumstances in which an adverse action notice is required?

(3) Should the Board's Regulation B be amended to eliminate requirements that institutions collect data on applicants' race, ethnicity, and gender, leaving HMDA as the only requirement for collection of similar data? Alternatively, should Regulation B be amended so that, if a consumer opts not to provide information on race, ethnicity, and gender, the lender is not required to collect the information on the basis of visual observation or surname?

Context: The primary federal fair lending statute, ECOA, is implemented through the Board's Regulation B. The Board's Official Staff Commentary to Regulation B provides additional guidance. Each federal banking agency enforces the requirements of ECOA with respect to the creditors for which such agency is the primary federal supervisor. The Board completed a comprehensive review of Regulation B and the Commentary in 2003. The federal banking agencies also have worked together to provide guidance on fair lending issues, particularly examiner guidance on conducting compliance and fair lending examinations at the institutions the agencies supervise. The federal banking agencies address matters involving more fact specific fair lending issues on a case-by-case basis.

[27] 12 CFR 35; 12 CFR 207 (Regulation G); 12 CFR 346; 12 CFR 533.

Guidance on Fair Lending Issues. Regulation B provides that a creditor may not require a signature of a loan applicant's spouse or other individual if that applicant qualifies independently for the credit. This restriction, however, does not apply to applications that are filed jointly by two or more individuals. The regulation states that a creditor may not deem the submission of a joint financial statement as evidence of intent to apply jointly. Thus, the issue arises as to what constitutes evidence of intent to apply for joint credit. The Board addressed the issue involving the ambiguity of when there is evidence of intent to apply for credit as joint applicants in its 2003 review of Regulation B. The Board adopted an amendment to the Commentary to provide additional guidance on how a consumer can establish intent to apply jointly for credit. Since that time, Board staff has responded on a case-by-case basis to requests for clarification of ways consumers can establish intent to apply jointly for credit, which appears to have adequately clarified the matter.

''Adverse Action'' Notice Requirements. Financial institutions must provide an adverse action notice to an applicant if a credit application is denied. The determination of when a credit application exists—as opposed to a general credit inquiry or evaluation—and under what circumstances it is considered to have been denied, has been the subject of questions. In the comprehensive review of Regulation B, discussed in the response to the preceding issue, the Board amended the Official Staff Commentary to Regulation B to provide additional guidance on the circumstances under which a general credit inquiry or a prequalification request can be considered an application for purposes of Regulation B. The additional guidance included new examples of when communications with consumers are considered applications. In the review of Regulation B, the Board also considered adopting a bright-line test for deciding whether an application exists. After carefully considering the benefits and drawbacks of a bright-line test, the Board decided at the time not to adopt such a test. While a bright-line test might provide clarity in some situations, it also would risk including as applications some situations that should not be included (for example, credit counseling in which a consumer's credit report is obtained). A bright-line test might also exclude some situations that should be covered because lenders might inform consumers that they do not qualify for credit even when consumers have not submitted a formal application.

Information on Applicants' Race, Ethnicity, and Gender for Regulation B and HMDA. Regulation B requires some collection of data that is not required under HMDA, including data on age and marital status. Thus, if all Regulation B monitoring requirements were eliminated, the age and marital status data would no longer be available to monitor lenders' compliance with fair lending law provisions that prohibit discrimination based on age or marital status. In addition, some lenders that are covered by Regulation B are not covered by HMDA; therefore, if the suggested change were adopted, no applicant data would be available for such lenders for the purpose of monitoring fair lending compliance.

In addition, if lenders were not required to note applicant information in cases where the applicant does not provide such information, the data available for monitoring fair lending compliance might be significantly incomplete, causing problems for fair lending enforcement.

Recommendation: For the reasons summarized above, generally the federal banking agencies have not supported changing ECOA in the manner discussed above.

o. Electronic Fund Transfer Act (Regulation E)

Issues:

(1) Should the Regulation E limits on consumer liability for unauthorized electronic fund transfers be increased?

(2) Can the requirement for periodic statements be eliminated in some cases (e.g., where the consumer has online access to account information), or can the required frequency of periodic statements be reduced in some cases (such as where there is no electronic fund transfer activity)?

Context: The Electronic Fund Transfer Act (EFTA) is implemented through the Board's Regulation E. Each Agency enforces the requirements of the EFTA with respect to the institutions for which such agency is the primary federal supervisor.

Increasing Regulation E Limits on Consumer Liability for Unauthorized Electronic Fund Transfers. The limits on consumer liability specified in the Board's Regulation E are required by and set forth in the EFTA. When the EFTA was enacted, Congress made a determination that placing strict limits on consumer liability for unauthorized transfers would serve as an incentive for financial institutions to develop more secure electronic fund transfer systems, as well as protect consumers from serious losses. Nevertheless, the EFTA gives consumers an incentive to guard their debit cards and personal identification numbers (PINs), because the consumer may be liable for a share of an unauthorized transaction.

Comments: Some commenters suggested tightening the rules on consumer liability to include a negligence standard under which a consumer who violated the standard may have greater liability for the loss or theft. Another commenter recommended generally increasing the consumer's liability from $50 to $250. Consumer group commenters suggested that institutions should not be permitted to place the burden of proof on a consumer regarding a claim of an unauthorized transfer and should be required to reimburse the consumer unless the institution can prove that the transfer was authorized.

Recommendation: Given Congress's goal of providing adequate incentives to both consumers and financial institutions to reduce risks, before increasing the limits on consumer liability serious consideration should be given to whether a higher limit would be appropriate or achieve the goal of relieving unnecessary burden. When the FSRRA was being considered in 2006, some proposed increasing the consumer liability under Regulation E from $50 to $500 for unauthorized transfers resulting from writing a PIN on a card or keeping the PIN in the same location as the card. The federal banking agencies generally did not support this amendment.

Periodic Statement Requirements. The Board has issued a number of proposals and interim rules under Regulation E over the past several years for the purpose of facilitating, and providing standards for, the use of electronic disclosures (including electronic periodic statements). In 2000, the Electronic Signatures in Global and National Commerce Act (E-Sign Act) was enacted to authorize the use of electronic records (including electronic consumer disclosures) with consumers' consent. Both the E-Sign Act and the Board's rules already provide for online periodic statements; therefore, paper statements are no longer required. Thus, it may not be necessary to completely eliminate the periodic statement requirement to reduce regulatory burden and the use of paper. In addition, in August 2006, the Board issued a final rule clarifying the application of Regulation E to payroll card accounts. The final rule grants flexibility to financial institutions in providing account information to payroll card users. Under the rule, institutions are not required to provide periodic paper statements for payroll card accounts if the institution makes account information available by telephone and electronically, and upon the consumer's request, in writing.

On the frequency of periodic statements, Regulation E permits quarterly statements (in place of monthly) where there is no electronic fund transfer activity (or no electronic fund transfer activity except for direct deposits). However, some consumers may need periodic statements even where there is no electronic fund transfer activity. For example, the consumer may have expected an electronic deposit to an account and may not know until receiving the statement that it failed to occur.

Comments: Commenters suggested that, in the case of consumers who have online or telephone access to monitor their accounts and transactions daily, the requirement for a monthly or quarterly periodic account statement is unnecessary. A commenter contended that the requirement to provide periodic statements quarterly for accounts with electronic access but no activity is unduly burdensome and suggested that the agencies amend the rule to allow for semiannual or annual statements in such cases.

Recommendation: The federal banking agencies believe that additional study would be necessary before making any recommendations for legislative changes or pursuing additional regulatory changes with respect to the frequency of periodic statements.

p. Truth in Savings Act (Regulation DD)

Issue: Should Truth in Savings Act (TISA) disclosures be revised to streamline, simplify, and improve the effectiveness of the disclosures, and to make them more understandable for consumers?

Context: The Board's Regulation DD implements TISA. However, each federal banking agency enforces the requirements of TISA with respect to the institutions for which such agency is the primary federal supervisor. The current Board policy provides that the Board must conduct a periodic review of its regulations, including Regulation DD, to update and, where appropriate, streamline them.

Comments: Many industry commenters asserted that their customers pay little attention to the TISA disclosures and, thus, the disclosure requirements impose unnecessary and burdensome costs on the industry. A consumer group suggested that the TISA disclosures should be required to be made available on financial institutions' Web sites.

Recommendation: The Board will consider suggestions for improving TISA disclosures during the next periodic review of Regulation DD. As a result, the federal banking agencies will wait until such review is completed before making any recommendations on this issue.

C. Other Joint Agency Initiatives

For many years, the Agencies have had programs in place to periodically review their regulations in an effort to eliminate any outdated or unnecessary regulations and to otherwise amend their regulations to better meet the Agencies' objectives, while minimizing regulatory burden. From previous reviews and as part of the EGRPRA review, certain issues were deemed "significant" in terms of being viewed by the industry as being particularly burdensome.

Pursuant to the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the federal banking agencies conducted a systematic review of their regulations and written policies to improve efficiency, reduce unnecessary costs and eliminate inconsistencies and outmoded and duplicative requirements. CDRI also directed the federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. As a result of the CDRI review that was completed in 1996, the federal banking agencies either jointly or individually rescinded or revised many rules and regulations. The federal banking agencies also have continued to incorporate the principles of CDRI into their regulatory policy development and periodically report these accomplishments to Congress.

Subsequently, the EGRPRA statute modified numerous regulatory requirements and procedures affecting the Agencies, financial institutions and consumers. The law:

- Streamlined application and notice requirements in a number of areas, such as nonbanking acquisitions by well-managed and well-capitalized bank holding companies;
- Allowed a 60-day period (with a 30-day extension) for FDIC consideration of completed applications from a state bank or its subsidiary to engage in an activity that is not permissible for a national bank;
- Directed each federal banking agency to coordinate examinations and consult with each other to resolve inconsistencies in recommendations to be given to an institution, and to consider appointing an examiner-in-charge to ensure the consultation takes place;
- Provided in cases of coordinated examinations of institutions with state-chartered subsidiaries, that the lead agency could be the state chartering agency;
- Required reports from all banking regulators on actions taken to eliminate duplicative or inconsistent accounting or reporting requirements in statements or reports from regulated institutions.

Certain significant burden reduction initiatives were already underway outside of the EGRPRA review process and are detailed below.

1. Community Reinvestment Act Interagency Rulemaking

When revised CRA rules were published in 1995, the federal banking agencies committed to undertake a comprehensive review of the regulations to ascertain whether the performance-based evaluation standards established by the revised rules had, among other things, minimized compliance burden. In July 2001, the federal banking agencies published a joint ANPR seeking comment to determine whether, and to what extent, the regulations should be amended to eliminate unnecessary burden as well as other issues.[28] In February 2004, after a review of the comments received on the ANPR, the federal banking agencies issued a joint NPR proposing changes to the regulations to reduce undue regulatory burden by changing the definitions of a "small bank" and a "small savings association" (which may qualify for a streamlined CRA evaluation) and to address abusive lending practices.[29]

On August 18, 2004, OTS published a final rule raising the small savings association asset threshold from $250 million to $1 billion (without consideration of holding company affiliation).[30] Also in August 2004, the FDIC published a proposed rule to raise the CRA small bank threshold to $1 billion without consideration of holding company affiliation and add a community development test for institutions between $250 million and $1 billion in assets.[31] In March 2005, the FDIC, the OCC, and the Board published a joint NPR (the March 2005 proposal) to (1) raise the small bank asset threshold to $1 billion, (2) eliminate data collection and reporting of small business, small farm, and community

[28] 66 FR 37602, July 19, 2001.

[29] 69 FR 5729, February 6, 2004.

[30] 69 FR 51155, August 18, 2004.

[31] 69 FR 51611, August 20, 2004.

development loans, (3) rationalize the performance tests to allow for more flexibility in meeting CRA goals, and (4) add a community development test for institutions between $250 million and $1 billion in assets.[32] The proposal also provided an annual inflation adjustment for these thresholds. In response to the NPR, a combined total of 10,000 comments were received on the March 2005 proposal.

After considering comments, the Board, FDIC, and OCC adopted a joint final rule on August 2, 2005.[33] The changes took effect September 1, 2005. The final rule sought to balance the need to provide meaningful regulatory relief to small banks and the need to preserve and encourage meaningful community development activities by those banks. The final rule raised the small bank threshold to $1 billion without consideration of holding company affiliation. These banks are no longer required to collect and report CRA loan data, responding to community bank concerns about unnecessary burden. The new rule also added an intermediate small bank examination process for banks with $250 million to $1 billion in assets. Under the new rule, these dollar thresholds are adjusted annually for inflation. The staff of the three agencies issued questions and answers for comment in November 2005 to address revisions to the regulations.[34] After review of the comments, in March 2006, the staff of the Board, FDIC, and OCC issued final questions and answers.[35]

OTS issued a final rule effective April 1, 2005, providing additional flexibility to each savings association evaluated under the large retail institution test to determine the combination of lending, service and investment it will use to meet the credit needs of its local community(ies), consistent with safe and sound operations.[36] The final rule allows savings associations to select any combination of weights assigned to lending, service and investment, as long as the weights total 100 percent and lending receives no less than a 50 percent weight.

In an April 12, 2006, final rule, OTS revised the definition of ''community development,'' making its definition consistent with that of the other agencies.[37] On that same date, OTS also issued a notice soliciting comments on proposed questions and answers guidance related to the final rule.[38] OTS finalized the proposed questions and answers on September 5, 2006.[39]

On November 24, 2006, OTS issued an NPR to revise its rule implementing CRA for interagency uniformity. The NPR was issued to solicit comment on whether OTS should revise its CRA rule to align with the CRA rules of other federal banking agencies. The proposal would eliminate alternative weights, add an intermediate small savings association examination for savings associates with assets between $250 million and $1 billion, adjust the asset thresholds annually for inflation, and incorporate a provision on discriminatory or other illegal practices. The comment period closed on January 23, 2007. OTS adopted a final rule on March 22, 2007, with an effective date for the rule of July 1, 2007.

2. Call Report Modernization

The FFIEC Central Data Repository (CDR) was successfully implemented on October 1, 2005. The CDR is designed to consolidate the collection, validation and publication of quarterly bank financial reports. All national, state member, and state non-member banks, including FDIC-insured state savings banks, were enrolled in the CDR and started using the CDR to file their financial reports via the Internet beginning with the third quarter of 2005. The CDR employs new technology that uses the eXtensible Business Reporting Language (XBRL) data standard to streamline the collection, validation, and publication of Call Report data. Over 7,900 financial institutions used the CDR to file their financial reports for the fourth quarter of 2006 via the Internet. The initial quality of the data was much higher than in previous quarters, which speeded the availability of the data to regulatory financial analysts and ultimately the public, thereby fulfilling one of the overarching goals of the CDR project. Higher data integrity, accuracy, and consistency will help to increase the efficiency with which the data can be collected, analyzed, and released to the public.

3. BSA/AML Compliance Outreach to the Banking Industry

The Agencies have conducted significant outreach to the banking industry in the area of BSA/AML compliance, with the goal of enhancing the clarity and consistency of regulatory requirements and supervisory expectations. In addition to engaging in dialogue with supervised banking organizations through the examination process, the Agencies have conducted outreach through various channels, such as conferences and training events sponsored by the Agencies or by trade associations. For example, in September 2006, the Agencies (in coordination with FinCEN and OFAC) hosted a series of conference calls to discuss the changes to the *FFIEC BSA/AML Examination Manual* and to provide financial institutions with the opportunity to raise questions. Approximately 10,500 financial institution personnel participated in these calls.

4. Regulatory Relief for Banks and Customers in the Hurricane Disaster Areas

The FFIEC established a special FFIEC Interagency Katrina Working Group to facilitate the coordination, communication, and response to financial institution supervisory issues arising in the aftermath of Hurricanes Katrina and Rita. State supervisors on the FFIEC State Liaison Committee also were invited to participate. Interagency efforts to help New Orleans and the Gulf region recover from the hurricane devastation included guidance on the establishment of temporary branches and branch- and employee-sharing arrangements. Efforts also included guidance on published responses to interagency frequently asked questions on additional topics including the CRA, BSA, and various operational issues, including regulatory reporting requirements. Agencies created Web sites with Hurricane Katrina and Rita disaster-related links, including FFIEC issuances for financial institutions, their customers, and employees who were impacted by the disasters. Other links provided were to disaster recovery and assistance agencies and trade associations with information for victims. In addition, telephone ''hotlines'' were set up and information provided regarding financial institution locations, contact information, and general disaster assistance information.

By relaxing certain documentation, notification and reporting requirements, the Agencies helped the affected institutions to continue operating during the days, weeks, and months following the disaster. For example, the Agencies immediately issued joint guidance asking insured depository institutions to consider all reasonable and prudent steps to assist customers' cash and financial needs in areas affected by the hurricane. Among the actions the Agencies encouraged institutions to consider were:

[32] 70 FR 12148, March 11, 2005.

[33] 70 FR 44256, August 2, 2005.

[34] 70 FR 68450, November 19, 2005.

[35] 71 FR 12424, March 10, 2006.

[36] 70 FR 10023, March 2, 2005.

[37] 71 FR 18614, April 12, 2006.

[38] 71 FR 18807, April 12, 2006.

[39] 71 FR 52375, September 5, 2006.

- Waiving ATM fees for customers and non-customers;
- Increasing ATM daily cash withdrawal limits;
- Easing restrictions on cashing out-of-state and non-customer checks;
- Waiving overdraft fees as a result of paycheck interruption;
- Waiving early withdrawal penalties on time deposits;
- Waiving availability restrictions on insurance checks;
- Allowing customers to defer or skip some loan payments;
- Waiving late fees for credit cards and other loans due to interruption of mail and/or billing statements, or the customer's inability to access funds;
- Easing credit card limits and credit terms on new loans;
- Delaying delinquency notices to credit bureaus; and
- Encouraging institutions to use non-documentary customer verification methods for customers that are not able to provide standard identification documents.

Finally, the federal banking agencies issued examiner guidance and a subsequent reminder making it clear that an institution retains flexibility in its workout or restructuring arrangements with customers in the disaster areas.

5. Reducing Examination Frequency

On April 10, 2007, the federal banking agencies jointly issued and requested comment on their respective interim rules to implement section 605 of the FSRRA (*see* Appendix I–A) enacted on October 13, 2006, and a subsequent conforming amendment enacted on January 11, 2007. (*See* 72 FR 17798, April 10, 2007.) The changes to the law made by this legislation give the agencies the discretion to conduct on-site examinations, on 18-month cycles rather than annual cycles, of highly rated insured depository institutions that have less than $500 million in total assets. Prior law allowed 18-month examination cycles only for such qualifying insured depository institutions with less than $250 million in total assets. In addition to reducing the burden on small, well-capitalized, and well-managed insured depository institutions, the changes to the law allow the federal banking agencies to better focus their supervisory resources on those institutions that may present issues of supervisory concern. The agencies' interim rules became effective on April 10, 2007, and the comment period closed on May 10, 2007.

6. Examination Programs

The Agencies have worked together to implement programs that improved regulatory risk-assessment capabilities and streamlined examinations and other supervisory functions. For example, as early as 1998, the FDIC, the Board, and CSBS worked together to develop and implement examination software applications that integrated information from various automated systems to assist in the preparation of an automated examination report. This cooperation promoted consistency among the Agencies and reduced regulatory burden on state-chartered banks. The same Agencies also formed a steering committee to better coordinate risk-focused examination procedures. The Agencies continue to work together to improve upon these examination tools. Since 1994, the Agencies have used a common core report of examination to promote interagency consistency and reduce regulatory burden.

7. Privacy Notices

Section 728 of the FSRRA requires that the Board, OCC, FDIC, OTS, NCUA, FTC, SEC, and Commodity Futures Trading Commission (CFTC) publish a proposed model privacy notice that is clear and comprehensive for public comment within 180 days of enactment. Section 728 of the FSRRA provides that the model notice will provide a safe harbor for the financial institutions that use it. Further, financial institutions may, at their option, use the model notice to satisfy the privacy notice requirements of the GLBA. The Board, OCC, FDIC, OTS, NCUA, FTC, SEC, and CFTC have developed a proposed model notice, which was published for public comment in March 2007 (earlier than required by the 180-day deadline) (72 FR 14940).

Efforts to simplify privacy notices have been underway for some time. In 2003, the Board, OCC, FDIC, OTS, NCUA, FTC, SEC, and CFTC published an ANPR in which they sought comment on simplifying privacy notices. After reviewing the comments received from the ANPR, the Board, OCC, FDIC, NCUA, FTC, and SEC engaged experts in plain language disclosures and consumer testing to assist them in developing a simple and comprehensible notice. That notice is now the one being proposed by the Board, OCC, FDIC, OTS, NCUA, FTC, SEC, and CFTC to fulfill the requirements of section 728 of the FSRRA.

In addition, during the consideration of amendments to be included in the FSRRA, Congress considered a proposal that would, subject to certain conditions, allow a financial institution to avoid having to provide an annual privacy notice to consumers, if the financial institution (1) did not disclose nonpublic personal information in a manner that would be subject to a consumer's right to opt out under applicable laws and (2) had not changed its privacy policies and procedures from the policies and procedures stated in the last notice that was provided to consumers. The annual notice, when required, must provide information about the institution's policies and procedures with respect to disclosing nonpublic personal information about consumers consistent with the customer's right to opt out of such disclosures under applicable statutes and regulations. The federal banking agencies generally supported this amendment. While this amendment was not included in the FSRRA as enacted, it was included in the House-passed version of this bill [40] and may be again considered by Congress in the future.

D. Individual Agency Efforts To Reduce Regulatory Burden

During the EGRPRA process, the federal banking agencies individually undertook efforts to reduce regulatory burden on institutions that they supervise and regulate. These initiatives took many forms, ranging from regulatory changes, streamlining of supervisory processes, and revisions of agency handbooks. Together, these efforts contributed significantly to the central goal of EGRPRA: Elimination of unnecessary regulatory burden on financial institutions.

1. The Board of Governors of the Federal Reserve System

During the EGRPRA review period, the Board has undertaken a number of initiatives to reduce unnecessary regulatory burden on the financial organizations it regulates and supervises. Such initiatives included revisions of various aspects of the Board's supervisory, regulatory, monetary policy, payments, and consumer protection rules, procedures, and guidance. In connection with its regulations and supervisory processes, the Board will continue to identify appropriate regulatory and supervisory revisions to reduce unnecessary burden while ensuring the safety and soundness of institutions, protecting the integrity of the financial payment systems, and safeguarding consumer protections.

a. Supervisory Initiatives. In 2006, the Board approved a final rule that expands the definition of a small bank holding company (small BHC) under the Board's Small Bank Holding Company

[40] H.R. 3505, 109th Congress, section 617 (2006).

Policy Statement (Policy Statement) and the Board's risk-based and leverage capital guidelines for BHCs (Capital Guidelines). The Board revised its Policy Statement to raise the small BHC asset size threshold from $150 million to $500 million and to amend the qualitative criteria for determining eligibility as a small BHC for the purposes of the Policy Statement and the Capital Guidelines. Additionally, the Board revised its regulatory financial reporting requirements so that qualifying small BHCs will only be required to file parent-only financial data on a semiannual basis (FR Y–9SP). These changes significantly increased the number of bank holding companies that are exempt from the Board's consolidated capital rules and that may benefit from more streamlined reporting requirements. The amendments to the threshold and the qualitative criteria reflect changes in the industry since the initial issuance of the policy statement in 1980.

In addition, the Board revised its guidance to examiners on the format of examination reports for community banking organizations in order to better focus examination findings on matters of risk and importance to the bank's overall financial condition. The Board designed the revisions to improve communications with bank management and boards of directors and to minimize burden on banking organizations. The revisions require the incorporation of findings of specialty examinations into the safety and soundness conclusions to provide a more comprehensive assessment.

To further enhance its risk-focused supervision program, the Board implemented revised procedures for the supervision of bank holding companies with total consolidated assets of $5 billion or less. The revisions to the bank holding company supervision procedures promote more effective use of targeted on-site reviews to fulfill the requirements, when necessary, for the full scope inspections of holding companies with total consolidated assets between $1 billion and $5 billion. Additionally, the revisions to the supervisory procedures promote a flexible approach to supervising bank holding companies and are designed to enhance the overall effectiveness and efficiency of the System's supervisory efforts for these institutions.

The Board also worked to revise the principles and goals initially adopted by the Nationwide State Federal Supervisory Agreement (Agreement) governing how state and federal banking agencies coordinate the supervision of interstate banks. This revised Agreement reinforces the longstanding commitment of federal and state agencies to provide efficient, effective, and seamless oversight of state banks of all sizes, including those institutions that operate in more than one state. Additional objectives of the Agreement are to ensure that supervision is flexible and risk-focused and minimizes regulatory burden and cost for covered institutions. Recommended supervisory practices also address aspects of the ongoing and rapid transition of the banking industry that have presented challenges (such as continued consolidation and engagement in more complex or specialized activities in order to remain competitive).

In an effort to better align the supervisory rating system for bank holding companies, including financial holding companies, with the Board's current supervisory practices, the Board implemented a revised BHC rating system that:

- Emphasizes risk management,
- Introduces a more comprehensive and adaptable framework for analyzing and rating financial factors, and
- Provides a framework for assessing and rating the potential impact of the parent holding company and its non-depository subsidiaries on the subsidiary depository institution(s).

Given that the revised rating system is consistent with current supervisory practices, the revisions are generally not expected to have an effect on the conduct of inspections, nor add to the supervisory burden of supervised institutions. Rather, the revised rating system will better communicate the supervisory findings of examination staff to both supervised institutions and the Board's staff.

b. Transactions with Affiliates. In 2002, the Board adopted in final form Regulation W [41] to implement, in a comprehensive fashion, the restrictions imposed by sections 23A and 23B of the Federal Reserve Act.[42] These sections, which impose limits and conditions on lending and certain other transactions between a bank and its affiliates, are a key component of the supervisory framework for all banks. The Board's purpose in adopting a regulation that, for the first time, comprehensively implemented these restrictions was, among other things, to simplify the interpretation and application of sections 23A and 23B by banking organizations, allow banking organizations to publicly comment on Board and staff interpretations of sections 23A and 23B, and minimize burden on banking organizations.

c. Regulation Y: Bank Holding Companies and Financial Holding Companies. The Board has made significant revisions to Regulation Y since the passage of EGRPRA that have substantially reduced regulatory burden on bank holding companies and significantly reduced processing times for applications/notices filed under Regulation Y. For example, in 1997, the Board adopted comprehensive amendments to its Regulation Y that significantly reduced regulatory burden by streamlining the application/notice process and operating restrictions on bank holding companies. The revisions included a streamlined and expedited review process for bank acquisition proposals by well-run bank holding companies and implemented changes enacted by EGRPRA that eliminated certain notice and approval requirements and reduced other requirements for nonbanking proposals by such companies. In addition, the Board expanded the list of permissible nonbanking activities and removed a number of restrictions on such activities. The revisions also amended the tying restrictions and included many other changes to Regulation Y to eliminate unnecessary regulatory burden.

In 2001, the Board also revised Regulation Y to implement changes enacted by the GLBA, which further significantly reduced regulatory burden on the nonbanking activity proposals of bank holding companies who elect financial holding company status. These revisions:

- Provided an expeditious approach to the election process to become a financial holding company,
- Identified the expanded types of nonbanking activities that are permissible for financial holding companies, and
- Provided a post-notice procedure for engaging in such activities.

During that year, the Board also adopted revisions to Regulation Y implementing the new authority for financial holding companies to engage in merchant banking activities and permitting financial holding companies to act as a ''finder'' in bringing together buyers and sellers for transactions that the parties themselves negotiate and consummate.

In 2003, the Board again amended Regulation Y to expand the types of commodity derivative activities permissible for all bank holding companies. In particular, these amendments permitted bank holding companies to (1) take and make delivery

[41] 12 CFR 223.

[42] 12 U.S.C. 371c, 371c–1.

of title to the commodities underlying commodity derivative contracts on an instantaneous, pass-through basis and (2) enter into certain commodity derivative contracts that do not require cash settlement or specifically provide for assignment, termination or offset prior to delivery. Also in 2003, the Board adopted a final rule that expanded the ability of all bank holding companies to process, store and transmit non-financial data in connection with their financial data processing, storage and transmission activities.

Since 2003, the Board also has issued orders permitting various financial holding companies to engage in physical commodity trading activities on a limited basis as an activity that is complementary to the company's financial commodity derivative activities.

Since the Board's revisions to Regulation Y in 1997 to streamline processing of nonbanking notices and since 2001 to implement the GLBA, there has been a dramatic decline in the number of nonbanking proposals that require Federal Reserve System approval. Therefore, there has been a substantial reduction of regulatory burden on bank holding companies engaged in nonbanking activities.

The Board is in the process of identifying additional revisions to Regulation Y that would clarify regulatory requirements and reduce regulatory burden for bank holding companies and financial holding companies where appropriate. In 2007, the Board expects to issue an NPR to solicit comments on those proposed revisions.

d. International Banking Initiatives. Since 1997, the Board has made a number of enhancements to Regulation K[43] governing foreign operations of U.S. banking organizations and the U.S. operations of foreign banking organizations (FBOs) to reduce regulatory burden, streamline the authorization process, and improve agency transparency.

(1) Comprehensive Amendments to Regulation K. In October 2001, following a rulemaking initiated in 1997, the Board approved comprehensive revisions to Regulation K, expanding the range of activities that U.S. banking organizations may conduct overseas and reducing associated processing times and filing requirements. For example, with respect to establishing foreign branches, an application requirement was replaced with a prior notice obligation, and the prior notice period was reduced from 45 days to 30 days or, in some instances, 12 days. General consent limits for investments in foreign subsidiaries or joint ventures were changed from an absolute dollar figure to a percentage of the investor's capital, with higher percentages authorized for well-capitalized and well-managed investors. The prior notice period applicable to foreign investments also was reduced from 45 days to 30 days. The scope of permissible nonbanking activities abroad was expanded, including in the areas of securities underwriting, dealing, and trading. In addition, the Board implemented statutory provisions authorizing member banks, with Board approval, to invest up to 20 percent of their capital and surplus in Edge and agreement corporations and the factors to be considered when making determinations on those requests.

The revisions to Regulation K also streamlined the application procedures applicable to FBOs seeking to expand operations in the United States. With respect to the establishment of some U.S. offices by FBOs, the Board replaced an application requirement with a 45-day prior notice obligation; other office proposals became subject to general consent procedures. The Board also liberalized the provisions governing the qualification of FBOs for exemptions from the nonbanking provisions of the Bank Holding Company Act and implemented provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 addressing changes in home state of FBOs.[44]

(2) International Lending Supervision. In January 2003, the Board amended Regulation K to eliminate the requirements as to the particular accounting method to be followed in accounting for fees on international loans and require instead that institutions follow GAAP in accounting for such fees.

e. Communication with Industry. The Federal Reserve strives to be as transparent as possible in communicating regulatory requirements and supervisory expectations to the institutions it supervises. In addition to making regulatory changes and policy-related or supervisory issuances available on the Board's public Web site, there is active and ongoing communication regarding regulatory requirements and supervisory expectations between supervisory staff at all Federal Reserve banks and the institutions in their Districts. Board members and senior management also participate regularly in meetings with bankers to provide insight regarding Federal Reserve regulatory and supervisory initiatives.

The Federal Reserve also hosts and participates in various outreach efforts. Its wide-ranging efforts include sessions directed to supervision staff, formal seminars and dialogues with industry representatives, and informal meetings on focused issues designed to foster two-way dialogue with the industry to help ensure that open channels of communication remain efficient and effective.

f. Payments, Reserves, and Discount Window Initiatives

(1) Discount Window Lending (Regulation A)

(a) Y2K Special Liquidity Facility. To address the possibility that depository institutions and their customers would experience unexpected credit and liquidity needs over the century date change period, the Board revised its Regulation A to implement a special limited-time discount window lending program. Under this Y2K special liquidity facility, Federal Reserve Banks offered credit at a rate 150 basis points above the Federal Open Market Committee's targeted federal funds rate to eligible institutions to accommodate liquidity needs during the century date change period. The facility was available from October 1, 1999, to April 7, 2000, and was intended to reduce potential market strains during that period and any attendant difficulties for depository institutions.

(b) Redesign of Discount Window Lending Program. Effective January 9, 2003, the Board also revised Regulation A to improve the operation of the discount window. Among other changes, the revisions replaced the existing adjustment credit program, which provided short-term credit at a below-market rate but only if the borrower had exhausted other funding sources and used the funds within prescribed limitations. The new primary credit program makes short-term credit available to generally sound institutions at an above-market rate, but with little or no administrative burden or use restrictions on the borrower. In addition to providing improved transparency and

[43] 12 CFR part 211.

[44] In 2002, the Board issued (and has since revised) application forms (collectively known as the FR K–2) to be used by FBOs when seeking regulatory authorizations under Regulation K. These replaced and significantly enhanced an informal set of staff questions to which FBOs routinely responded when seeking such authorizations. The Board also modified (and has since revised) the FR K–1, consisting of forms to be used by U.S. banking organizations seeking authorization to conduct or expand foreign operations, to reflect the enhancements to Regulation K.

reduced administrative burden to the discount window process, the revisions also reorganized and streamlined the regulatory language to make it easier to understand.

(2) Check Collection (Regulation CC)

(a) Y2K Extension of Time for Merger-Related Reprogramming. The Board's Regulation CC allows merging depository institutions one year to combine their automation systems for check collection and funds availability purposes under Regulation CC. In the late 1990s, the Board recognized that depository institutions were dedicating significant automation resources to addressing Y2K computer problems and may have been challenged to make and test other programming changes, including those that needed to comply with Regulation CC's merger transition provisions, without jeopardizing their Y2K programming efforts. Therefore, the Board amended Regulation CC to allow depository institutions that consummated a merger on or after July 1, 1998, and before March 1, 2000, greater time to implement software changes related to the merger.

(b) Implementation of the Check 21 Act. Effective October 28, 2004, the Board adopted amendments to Regulation CC to implement the Check 21 Act, a law that was based on a Board proposal to Congress and that the Board strongly supported. Electronic collection of checks often is faster and more efficient than collecting checks in paper form. However, prior to the Check 21 Act, banks' use of electronic check collection was impeded by the fact that paying banks, by law, could require presentment of original checks. The Check 21 Act and the Board's implementing amendments authorized a new negotiable instrument, known as a substitute check, which is a special copy of the original check that, when properly prepared, is the legal equivalent of the original check. The Check 21 Act facilitated the ability of banks to send check-related information electronically for most of the check collection process because a bank that has the electronic check file now is able to provide a legally equivalent substitute check when and where an original check is needed. When it implemented the Check 21 Act, the Board made other clarifying changes to Regulation CC to make it easier for depository institutions to understand and comply with the regulation.

(c) Remotely Created Checks. ''Remotely created checks'' typically are created when the holder of a checking account authorizes a payee, such as a telemarketer, to draw a check on that account but does not actually sign the check. In place of the signature of the account-holder, the remotely created check generally bears a statement that the customer authorized the check or bears the customer's printed or typed name. State laws vary with respect to whether or not the bank that holds the account from which a check is paid (the paying bank) has a warranty claim back against the bank of first deposit (the depositary bank) if the paying bank's customer reports that a remotely created check is unauthorized. Effective July 1, 2006, the Board amended Regulation CC to provide such a warranty claim for the paying bank. This amendment reduces the likelihood that paying banks ultimately will bear financial losses due to fraudulent remotely created checks and places responsibility for those checks on the bank whose customer deposited the check and who, therefore, is in the best position to detect and present the fraud.

(3) Location of Federal Reserve Accounts (Regulations D and I). Statutory changes in the mid-1990s, such as the Riegle-Neal Interstate Banking and Branching Efficiency Act, eliminated many barriers to interstate banking. Consequently, the number of depository institutions that operated branches in more than one Federal Reserve District increased. On January 2, 1998, the Federal Reserve Banks implemented a new account structure to provide a single Federal Reserve account for each domestic depository institution.

Specifically, to provide increased flexibility to depository institutions in managing their operations in diverse geographic locations, the Board revised Regulations D and I to allow depository institutions with offices in multiple Federal Reserve districts to be able to request a determination from the Board that the institution is deemed to be located in a district other than the district of its charter location for purposes of reserve account location (Regulation D) and Federal Reserve membership (Regulation I). The amendments set out criteria that the Board would use in making such a determination, including the business needs of the bank; the location of the bank's head office; the location of the bulk of the bank's business; and the location that would allow the bank, the Board, and the Reserve Banks to perform their functions most efficiently and effectively.

g. Consumer Regulatory Initiatives

(1) Electronic Fund Transfers (Regulation E)

(a) Error Resolution. Regulation E requires financial institutions to investigate and resolve consumer claims of error within prescribed time periods. In general, an institution must either resolve the claim within 10 business days or provisionally recredit the consumer's account within that time and finally resolve the claim within 45 calendar days. In 1998, the Board amended Regulation E to extend these deadlines from 10 business days to 20 business days and from 45 calendar days to 90 calendar days in the case of new accounts, recognizing the higher fraud risk for new accounts and consequently institutions' need for more time to investigate error claims.

(b) Electronic Check Conversion. In 2001, the Board issued amendments to the Official Staff Commentary to Regulation E relating to electronic check conversion. In electronic check conversion transactions, a payee uses a consumer's check to initiate a one-time automated clearing house (ACH) debit to the consumer's account, by capturing the routing, account, and check numbers from the magnetic ink character recognition (MICR) line on the check. The payee may be a merchant at point-of-sale (POS) or a bill payee receiving the check via a lockbox. The amendments provide that electronic check conversion transactions are covered by Regulation E and afford guidance on how particular regulatory requirements apply to such transactions. By providing clarification and guidance, the Board sought to facilitate greater use of electronic check conversion, which can provide benefits to consumers, creditors and other payees, and depository institutions.

In 2006, the Board issued further amendments dealing with electronic check conversion, both to the Commentary and to Regulation E itself, to provide further clarification and guidance. One of these amendments permits payees to obtain a consumer's authorization to use information from the check to initiate an electronic fund transfer or to process the transaction as a check, easing compliance for payees.

(c) Stop-Payment Procedures. In the 2006 amendments, the Board also revised the Commentary to facilitate compliance with the Regulation E's requirements regarding stopping payment of recurring debits to a consumer's account. The revision permits an institution to use a third party (such as a debit card network) to stop payment, if the institution does not itself have the capability to block the debit from being posted to the account.

(d) Notice of Variable-Amount Transfers. Regulation E provides that if a recurring debit from a consumer's account will vary in amount from the previous transfer, or from the preauthorized amount, the designated payee or the consumer's financial institution must give the consumer the option to receive written notice of the amount and scheduled date of the debit 10 days in advance. In the 2006 amendments, the Board revised the Commentary to exempt recurring transfers to an account of the consumer at another institution from this requirement, provided the amount of the transfer falls within a specified range that reasonably could be anticipated by the consumer. This revision should help eliminate unnecessary notices and provide cost savings in the case of transfers of interest on a certificate of deposit held at one institution to the consumer's account at another institution.

(e) Fee Disclosures at Automated Teller Machines. If a consumer uses an automated teller machine (ATM) operated by an institution other than the one holding the consumer's account, Regulation E requires the ATM operator to disclose any transaction fee imposed by the operator. In the 2006 amendments, the Board revised the regulation and the Commentary to clarify that the fee notice may state either that a fee ''will'' be imposed, or that a fee ''may'' be imposed (unless the fee will be imposed in all cases). This clarification addresses issues raised by a number of institutions that had been charged with noncompliance by claimants asserting that the regulation required use of the term ''will,'' even on ATMs where a fee is not imposed in all cases.

(f) Payroll Cards. In 2006, the Board adopted an amendment to Regulation E relating to payroll card accounts. The amendment provides that payroll card accounts (established to provide salary, wages, or other employee compensation on a recurring basis) are covered by Regulation E, and also provides that periodic statements need not be sent to payroll card holders if account information is available through certain other means (including electronically). By clarifying coverage of payroll card accounts and also granting relief from the periodic statement requirement, the amendment may facilitate the use of such accounts and thereby reduce costs for employers, as well as providing unbanked employees a convenient way to receive their pay.

(g) Receipts. In 2007, the Board adopted an amendment to Regulation E to create an exception for transactions of $15 or less from Regulation E's requirement that receipts be made available to consumers for transactions initiated at an electronic terminal. The amendment was intended to allow debit card transactions by a consumer in retail environments where making receipts available may not be practical or cost effective.

(2) Truth in Lending (Regulation Z). As noted above, the Board is undertaking a comprehensive review of Regulation Z. As part of that review, the Board intends to consider ways to reduce unnecessary regulatory burden consistent with the purposes and requirements of TILA. In 2007, the Board issued a proposed amendment to Regulation Z to improve the effectiveness of the disclosures that consumers receive in connection with credit card accounts and other revolving credit plans by ensuring that information is provided in a timely manner and in an understandable form. The Board sought comment on the elimination of the requirement to disclose the ''effective'' or ''historical'' annual percentage rate, among other proposals that could reduce regulatory burden on institutions. (The effective annual percentage rate reflects the cost of interest and certain other finance charges imposed during the statement period.)

(a) Credit Card Fees. Regulation Z requires credit card issuers to disclose ''finance charges'' (fees that are imposed as an incident to or a condition of the extension of credit), as well as ''other charges'' (fees that are not finance charges but that are significant charges that may be imposed as part of the credit card plan). In 2003, the Board revised the Official Staff Commentary to Regulation Z to address the status of two types of fees charged on credit card accounts as to which the credit card industry had sought guidance—a fee imposed when a consumer requests that a payment be expedited, and a fee imposed when a consumer requests expedited delivery of a credit card. The Commentary revisions provided that both types of fees constitute neither finance charges nor other charges (and therefore are not subject to the disclosure requirements of Regulation Z). The revisions reduce regulatory burden by relieving card issuers of disclosure requirements (for example, in disclosures provided at account opening and on periodic statements) that might otherwise have applied.

(b) Issuance of Credit Cards. Regulation Z provides that, in general, credit cards may be issued only in response to a request or application, except that a card issued as a renewal or substitute for an existing card may be issued automatically. Further, generally only one renewal or substitute card may be issued to replace one existing card (the ''one-for-one'' rule). The 2003 Commentary revisions provided an exception to the one-for-one rule, whereby a card issuer may replace an existing credit card with more than one renewal or substitute card, if (1) the replacement cards access only the same account of the existing card, (2) all cards issued on the account are governed by the same terms and conditions, and (3) the consumer's total potential liability for unauthorized credit card use with respect to the account does not increase. These changes accommodated developments in the credit card industry in which some card issuers are able to issue a supplemental card, sometimes in different sizes and formats from the existing card, along with the regular card replacing the existing card, which may enhance consumer convenience. The changes could reduce costs by not requiring card issuers to first obtain a request from a consumer before issuing the supplemental card, while also including terms to protect customers.

(3) Consumer Compliance Examination. The Board has adopted a consumer compliance risk-focused supervision program designed to ensure that all its supervised organizations comply with consumer protection laws and regulations. The program is founded on the expectation that each state member bank and bank holding company will appropriately manage its own consumer compliance risk as an integral part of the organization's corporate-wide risk management function. The adequacy of an organization's consumer compliance risk management program is evaluated in the context of the inherent risk to the organization and its customers. Accordingly, smaller and less complex organizations with a lower risk profile, deemed to have an adequate compliance risk management program, require less supervisory scrutiny.

The risk-focused supervisory program directs resources to organizations, and to activities within those organizations, commensurate with the level of risk to both the organization and the consumer. It provides for the efficient and effective deployment of resources including examiner time, by allowing Reserve Banks to tailor supervisory activities to the size, structure, complexity, and risk of the organization. This supervisory approach reduces regulatory burden on institutions and results in more efficient use of examiner time and resources.

(4) Proposed Amendments to Consumer Financial Services and Fair Lending Regulations (Regulations B, E, M, Z, and DD). In 2007, the Board issued proposed amendments to five consumer financial services and fair lending regulations (Regulations B, E, M, Z, and DD) to clarify the requirements for providing consumer disclosures in electronic form. The proposed amendment would withdraw provisions that could impose undue regulatory burden on electronic banking and commerce.

2. Federal Deposit Insurance Corporation

On an ongoing basis, the FDIC is aware of regulatory burden and addresses such issues where appropriate. When areas of the country experience natural disasters and other misfortunes, the FDIC issues financial institution letters to provide regulatory relief to those institutions affected by such events and to thereby facilitate recovery in the communities. For example, a FIL may be issued asking financial institutions in those areas to extend repayment terms, restructure existing loans where appropriate, and provide that the FDIC would consider regulatory relief from certain filing and publishing requirements for financial institutions in the affected areas.

a. FDIC's Deposit Insurance Rules. Bankers and consumers have suggested that the FDIC should simplify the insurance rules to make them easier for bankers to understand and for depositors to qualify for increased coverage by placing funds in different rights and capacities. In recent years, the FDIC has adopted several regulatory changes in a concerted effort to simplify the rules for deposit insurance coverage.

The Federal Deposit Insurance Reform Act of 2005 (Reform Act), which the President signed into law on February 8, 2006, provides for numerous enhancements of the federal deposit insurance system, including an increase in the maximum amount of deposit insurance coverage for certain retirement accounts from $100,000 to $250,000. In addition, the new law establishes a method for considering an increase in the insurance limits on all deposit accounts (including retirement accounts) every five years starting in 2011 and based, in part, on inflation.

Although the Reform Act increased the maximum insurance limit for certain retirement accounts to $250,000, Congress decided against increasing the insurance limit for all other deposit accounts. Thus, the basic insurance limit for all deposit accounts remains at $100,000. However, as noted above, the insurance limit for all deposit accounts may be increased every five years based on inflation beginning in 2011.

(1) Specific Deposit Insurance Rule Changes

(a) Deposit Insurance Regulations; Inflation Index; Certain Retirement Accounts and Employee Benefit Plan Accounts. The FDIC amended its deposit insurance regulations to implement applicable revisions to the Federal Deposit Insurance Act (FDI Act) made by the Reform Act and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005. The interim rule, which became effective on April 1, 2006, provides for the following:

- Consideration of inflation adjustments to increase the current standard maximum deposit insurance amount of $100,000 on a five-year cycle beginning in 2010;
- Increase in the deposit insurance limit for certain retirement accounts from $100,000 to $250,000, also subject to inflation adjustments; and
- Per-participant insurance coverage to employee benefit plan accounts, even if the depository institution at which the deposits are placed is not authorized to accept employee benefit plan deposits.

The changes to the deposit insurance rules implemented by this rulemaking will benefit depositors by increasing coverage for retirement accounts and removing a limitation on the availability of pass-through insurance coverage for employee benefit plan accounts. Section 330.14 is amended to reflect that pass-through coverage for employee benefit plan accounts no longer hinges on the capital level of the depository institution where such deposits are placed. Under the former law, pass-through coverage for employee benefit plan deposits was not available if the deposits were placed with an institution not permitted to accept brokered deposits. Under section 29 of the FDI Act (12 U.S.C. 1831f), only institutions that meet prescribed capital requirements may accept brokered deposits. The Reform Act takes a different approach. It prohibits insured institutions that are not ''well capitalized'' or ''adequately capitalized'' from accepting employee benefit plan deposits. But, under the Reform Act, employee benefit plan deposits accepted by any insured depository institution, even those prohibited from accepting such deposits, are nonetheless eligible for pass-through deposit insurance coverage. This change in the deposit insurance rules will apply to all employee benefit plan deposits, including employee benefit plan deposits placed before the effective date of the interim rule, irrespective of whether such deposits would have been eligible for pass-through coverage under the former statute and rules. The other requirements in section 330.14 of the FDIC's rules on the eligibility of employee benefit plan deposits for pass-through insurance coverage continue to apply.

(b) Deposit Insurance Coverage Regulations: Living Trust Accounts. Effective April 1, 2004, the FDIC amended its regulations to clarify and simplify the deposit insurance coverage rules for living trust accounts. The amended rules provide coverage up to $100,000 per qualifying beneficiary who, as of the date of an insured depository institution failure, would become the owner of the living trust assets upon the account owner's death. The FDIC undertook this rulemaking because of the confusion among bankers and the public about the insurance coverage of these accounts. Prior to the amended rulemaking, the amount of insurance coverage for a living trust account could only be determined after the trust document has been reviewed to determine whether there are any defeating contingencies. Consequently, in response to questions about coverage of living trust accounts, the FDIC could only advise depositors that the owners of living trust accounts seek advice from the attorney who prepared the trust document. This process was burdensome to both consumers, bankers, and other financial service providers. Also, when a depository institution fails the FDIC must review each living trust to determine whether the beneficiaries' interests are subject to defeating contingencies. This often is a time-consuming process, sometimes resulting in a significant delay in making deposit insurance payments to living trust account owners.

(c) Deposit Insurance Certified Statements. The FDIC modernized and simplified its deposit insurance assessment regulations governing certified statements, to provide regulatory burden relief to insured depository institutions. Under the final rule, insured institutions will obtain their certified statements on the Internet via the FDIC's transaction-based e-business Web site, FDICconnect. The FDIC provides e-mail notification each quarter to let depository institutions know when their quarterly certified statement invoices are available on FDICconnect. An institution that lacks Internet access may request from the FDIC a one-year renewable exemption from the use of FDICconnect, during which it will continue to receive quarterly certified statement invoices by mail. Correct certified statements will no longer be signed by insured institutions or returned to the FDIC, and the semiannual certified statement process will be synchronized with the quarterly invoice process. If an insured institution agrees with its quarterly certified statement invoice, it will simply pay the assessed amount and retain the invoice in its own files. If it disagrees with the quarterly certified statement invoice, it will either amend its report of condition or similar report (to correct data errors) or amend its quarterly certified statement invoice (to correct calculation errors). The FDIC will automatically treat either as the insured institution's request for revision of its assessment computation, eliminating the requirement of a separate filing. With these amendments, the time and effort required to comply with the certified statement process will be reduced.

(d) Certification of Assumption of Deposits and Notification of Changes of Insured Status. The FDIC adopted a final rule that became effective on March 23, 2006, clarifying and simplifying the procedures to be used when all of the deposit liabilities of an insured depository institution have been assumed by another insured depository institution or institutions. The final rule clarifies the deposit insurance certification filing responsibilities for assumed and assuming institutions and eliminates the need for orders terminating deposit insurance in certain instances. Finally, the rule would provide more specificity concerning how notice is given to depositors when an insured depository institution voluntarily terminates its insured status without the assumption of all of its deposits by an insured institution. The revisions make the insurance termination process easier for insured depository institutions and more efficient for the FDIC.

(e) Funds Merger. The FDIC merged the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF) to form the Deposit Insurance Fund, effective March 31, 2006. This action was pursuant to the provisions in the Reform Act. The FDIC amended its regulations to reflect the funds merger.

(f) One-Time Assessment Credit. The FDIC amended its regulations to implement a one-time assessment credit pursuant to the provisions in the Reform Act. The final rule was published on October 18, 2006. The rule implements the one-time assessment credit; establishes the aggregate one-time assessment credit at approximately $4.7 billion to be divided among eligible depository institutions; and defines eligible insured depository institution as an insured depository institution that was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date or is a *successor* to such an institution. The rule allows institutions to use their assessment credits to offset deposit insurance assessments to the maximum extent allowed by law.

(g) Educational and Outreach Efforts for Deposit Insurance Rules. In addition to simplifying and clarifying the deposit insurance rules, the FDIC engages in a wide range of educational and outreach initiatives intended to inform bankers and depositors on the rules for deposit insurance coverage. Examples of these efforts include:

- FDIC Web site (*http://www.fdic.gov*), which offers extensive information for bankers and consumers on FDIC deposit insurance coverage, including publications and newsletters, videos on deposit insurance coverage, and an interactive electronic calculator that bankers and consumers can use to determine the maximum insurance coverage for their deposit accounts at an insured institution
- FDIC Call Center, which is staffed by deposit insurance specialists who answer banker and consumer questions about deposit insurance coverage and other banking issues
- Customer Assistance Online Form, where bankers and consumers can obtain written responses to questions about FDIC deposit insurance coverage
- Deposit Insurance Seminars for bankers, which include telephone seminars and traditional training seminars on the deposit insurance rules

(h) Advertisement of Membership/Logo. The final rule on the FDIC's advertising logo was published on November 13, 2006, and becomes effective November 13, 2007. The rule replaces the separate signs used by BIF and SAIF members with a new sign, or insurance logo, to be used by all insured depository institutions. The new rule consolidates the exceptions to the official advertising statement requirements from 20 to 10 by requiring the statement only in advertisements that either promote deposit products and services or promote non-specific banking products and services.

(2) Applications, Reporting, and Corporate Powers; Filing Procedures, Corporate Powers, International Banking, Management Official Interlocks, Golden Parachute, and Indemnification Payments. The FDIC adopted a final rule amending its procedures relating to filings, mutual to stock conversions, international banking, management official interlocks and golden parachute payments. The changes are mostly technical in nature or clarify previous FDIC positions; nevertheless, the revisions make the applications process more transparent to the public. The FDIC's regulations at 12 CFR 303 generally describe the procedures to be followed by both the FDIC and applicants with respect to applications and notices required to be filed by statute or regulation. On December 27, 2002, the FDIC issued in final form a revised part 303 to reflect a recent internal reorganization at the FDIC and to remove internal delegations of authority from the regulation. The regulation was revised to clarify terms and to establish 30 days as a reasonable time in which to review any response submitted by an institution or institution-affiliated party. The FDIC also added a provision setting forth its authority to waive any non-statutorily required provision for good cause and to the extent permitted by statute. The revised rule clarifies when a change in control notice is required and may be consummated. Finally, the FDIC adopted a technical correction to section 303.244, creating a cross-reference to section 359.4(a)(4) of this chapter regarding golden parachutes and severance plan payments to make clear the responsibilities of an applicant seeking approval of filings.

(3) Annual Independent Audits and Reporting Requirements. The Corporation amended 12 CFR 363 of its regulations by raising the asset size threshold from $500 million to $1 billion from requirements relating to internal control assessments and reports by management and external auditors. The amendment also relieves covered institutions with total assets of less than $1 billion from having outside directors on the audit committee from being independent of management. The amendment does not relieve public covered institutions from their obligation to comply with applicable provisions of the SOX Act and the SEC's implementing rules. The revisions became effective on December 31, 2005.

(4) International Banking. The FDIC conducted a comprehensive review of its International Banking Rules. The revised rules, which became effective July 1, 2005, amend 12 CFR 303, 325, and 327 relating to international banking; and revise part 347, subparts A and B. The rules were reorganized and clarified to reduce regulatory burden. The revised rule expanded the availability of general consent for foreign branching and investments by insured state nonmember banks abroad

and addressed intrastate and interstate relocations for ''grandfathered branches.'' In addition, the ''fixed'' percentage asset pledge requirement for existing insured U.S. branches of foreign banks (''grandfathered branches'') was replaced by a risk-focused asset pledge requirement.

(5) Extension of Corporate Powers. Effective October 18, 2005, the FDIC amended its interpretive rule, 12 CFR 333.101(b), which states that insured state nonmember banks not exercising trust powers may offer self-directed traditional Individual Retirement Accounts (IRA) and Keogh Plan accounts without the prior written consent. Since 1985, Congress has introduced new accounts with tax-incentive features comparable to these plans. Accordingly, the interpretive ruling was expanded to expressly include Coverdell Education Savings Accounts, Roth IRAs, Health Savings Accounts, and other similar accounts.

(6) Other Accomplishments and Initiatives. FDICconnect is a secure Internet site developed by the FDIC to facilitate business and exchange information between the FDIC and FDIC-insured institutions. FDICconnect provides a secure e-business transaction channel that supports implementation of the Government Paperwork Elimination Act, which requires agencies to provide online consumer and business alternatives for paper-based processes. The national rollout of FDICconnect began on December 8, 2003. FDICconnect supports examination file exchange, electronic distribution of ''Special Alerts,'' electronic submission of deposit insurance invoices, and electronic filing of certain applications and notices. FDICconnect reduces regulatory burden by providing a more efficient means for insured institutions to interact with the FDIC and various states. Twenty business transactions are available through FDICconnect, and as of March 2006, there were 8,263 FDIC-insured institutions registered with FDICconnect.

Beginning July 2007, enhancements to the system enable financial institutions to securely exchange electronic pre-examination and examination files with the FDIC and/or their state banking regulator. The use of the system should relieve examination burden on institutions by allowing FDIC staff to complete a significant portion of the examination process off-site.

(7) Risk-Focused Examinations. The FDIC has improved examination efficiency and reduced burden on the banks it supervises by raising the threshold for well-rated, well-capitalized banks qualifying for streamlined Maximum Efficiency, Risk-Focused, Institution Targeted (MERIT) examinations from $250 million to $1 billion, implementing more risk-focused compliance and trust examinations, and streamlining information technology (IT) examinations for institutions that pose the least technology risk. The MERIT program, originally implemented in April 2002, was applicable to banks with assets under $250 million. During a MERIT examination, the examiners use procedures that focus on determining the adequacy of the institution's internal controls system and the effectiveness of its risk management program and processes. The program provides an opportunity for the FDIC to redirect examination resources to institutions that pose higher risk.

(a) Relationship Manager Program. On October 1, 2005, the Corporation implemented the Relationship Manager Program for all FDIC-supervised institutions. The program, which was piloted in 390 institutions during 2004, is designed to strengthen communication between bankers and the FDIC, as well as improve the coordination, continuity, and effectiveness of regulatory supervision. Each FDIC-supervised institution was assigned a relationship manager, who serves as a local point of contact over an extended period, and will often participate in or lead examinations for his or her assigned institution. The program will allow for flexibility in conducting examination activities at various times during the 12- or 18-month examination cycle based on risk or staffing considerations.

(b) IT Examinations. The FDIC has updated its risk-focused IT examination procedures for FDIC-supervised financial institutions under its new Information Technology Risk Management Program (IT–RMP). IT–RMP procedures were issued to examiners on August 15, 2005. The new procedures focus on the financial institution's information security program and risk-management practices for securing information assets. The program integrates with the Relationship Manager Program by embedding the IT examination within the Risk Management Report of Examination for all FDIC-supervised financial institutions, regardless of size, technical complexity, or prior examination rating.

(c) Compliance Examinations. Compliance examination procedures were first revised in July, 2003, and have been updated periodically since then to make the compliance examination process more efficient and allow examiners to focus their examination efforts on compliance areas with the highest risk to both consumers and financial institutions.

(8) Community Reinvestment Act. During EGRPRA Outreach meetings, bankers suggested that the FDIC expand what qualifies for CRA credit under the service test, such as community service activities and provide additional guidance to banks about ways to meet both the service and investment tests. In response, the FDIC made it easier for banks to assist low and moderate income individuals, and obtain CRA credit for doing so, by developing MoneySmart, a financial literacy curriculum. The FDIC provides the MoneySmart program, which is available in six languages and a version for the visually impaired, free to all insured institutions. The FDIC also published its Community Development Investment Guide, which is designed to assist banks considering community development investments to navigate the complex laws and regulations that may apply.

(9) Redesign of Financial Institution Letters. The industry suggested that regulators should try to make their publications, such as FILs, more concise and descriptive, so that readers can immediately determine if the guidance or recommendations applies to their bank. In response, the FDIC redesigned the format for its FILs. The new format is designed to promote the quick identification of key issues and to expedite the delivery of the information to the appropriate party. Additionally, the FDIC is moving toward an all-electronic distribution of FILs to eliminate unwanted paper and to better facilitate the distribution of FILs within each bank.

(10) Bank Secrecy Act/Anti-Money Laundering Outreach. In an effort to enhance bank personnel's understanding of the regulatory requirements associated with the BSA, the FDIC conducts or participates in numerous BSA outreach events during the year. During these events the FDIC discusses outstanding BSA/AML guidance and current regulations as well as BSA examination requirements outlined in the *FFIEC BSA/AML Examination Manual.* In September 2006, the FDIC hosted, along with the other federal banking agencies, FinCEN and the Office of Foreign Assets Control, a series of conference calls to discuss the changes to the *FFIEC BSA/AML Examination Manual.* Approximately 10,500 bank personnel participated in this three-day event.

3. The Office of the Comptroller of the Currency

The OCC regularly reviews its regulations to identify opportunities to streamline regulations or regulatory processes, while ensuring that the goals of protecting safety and soundness, maintaining the integrity of bank operations, and safeguarding the interests of consumers are met. In the mid-1990s, pursuant to its comprehensive ''Regulation Review'' project, the OCC looked carefully at every regulation in its rulebook with that goal in mind. As a result of that project, the OCC made significant, substantive revisions to virtually every one of its regulations.

More recently in connection with the OCC's review of its regulations required by EGRPRA, the OCC identified further revisions that could be made to its rules. Based on this review, the OCC has developed a proposal that would update and streamline a number of the OCC's rules to reduce regulatory burden, as well as to make technical, clarifying, and conforming changes to certain rules. Summarized below is the OCC's recent regulatory burden relief proposal, as well as other actions that the OCC has taken in recent years to ease unnecessary regulatory burden on national banks.

a. Recent Significant Regulatory Burden Relief Initiative.

On July 3, 2007, the OCC published an NPR [45] soliciting public comment on proposed amendments to the OCC's regulations developed in connection with its EGRPRA review. The comment period expires on September 4, 2007. Some of these proposed changes would relieve burden by eliminating or streamlining existing requirements or procedures. Others would enhance national banks' flexibility in conducting authorized activities, either by revising provisions currently contained in regulations or by codifying, and, thus, making generally applicable, determinations made on a case-by-case basis. A third category of proposed changes would eliminate uncertainty by harmonizing a particular rule with other OCC regulations or with the rules of another agency. A fourth category would cover technical revisions that update the OCC's rules to reflect changes in the law, including the recently enacted FSRRA, or in other regulations.

b. Enhancing National Banks' Flexibility Consistent With Safety and Soundness

(1) Lending Limits Pilot Program. On June 7, 2007, the OCC published an interim final rule with request for comment to amend the OCC's regulation at 12 CFR 32.7.[46] This regulation governs the pilot program providing eligible national banks [47] with the authority to apply special lending limits with respect to loans to one borrower in the case of 1–4 family residential real estate loans, small business loans, and small farm loans or extensions of credit. This special lending authority is subject to certain conditions that ensure that lending under higher limits is consistent with safety and soundness. The comment period closed on July 9, 2007.

The interim final rule makes two changes to the current program. First, the program as initially adopted in September 2001 provided for an expiration date. The expiration date has been extended over the years to September 11, 2007. The interim final rule deletes the expiration date thereby making the program permanent. Second, the interim final rule eliminates one of the restrictions that applied to such lending. Other restrictions and caps based on the bank's capital and surplus, however, continue to apply. Eligible national banks will continue to be subject to caps on the special lending authority that apply both to an individual borrower and to the aggregate amount that a bank may lend under the program. The OCC's supervisory experience with the program has been positive from a safety and soundness perspective. Moreover, national banks participating in the program indicate that the special lending limits allows them to better serve their customers and communities.

(2) Electronic Banking Rule. Regulatory burden results when regulations do not keep up with the changing ways in which banks do business. The OCC also has updated its rules and processes to reflect the effects of technological advances on the business of banking. In 2002, the OCC published a final rule entitled ''Electronic Activities.'' [48] This rule clarified and expanded the types of electronic activities that national banks are permitted to conduct and placed all of its related rules together in one section of the *Code of Federal Regulations* (CFR) for ease of reference.

The regulation incorporated specific precedent addressing the ability of national banks to act as ''finders'' via electronic means, such as the Internet. It also codified the standards that the OCC applies to determine whether electronic banking activities are part of, or incidental to, the business of banking and thus permissible under federal law. The final rule also clarified that a proposed activity comprising separate permissible interrelated activities also would be permissible.

The rule permitted national banks to acquire or develop excess capacity in good faith for banking purposes, and allowed banks to sell such capacity so long as it was legitimately acquired or developed for its banking business. It codified national bank authority to act as a digital certification authority and extended that authority to certify attributes going beyond identity, for which verification is part of, or incidental to, the business of banking. And it codified previous OCC interpretations confirming that a national bank may collect, process, transcribe, analyze, and store banking, financial and economic data for itself and its customers as part of the business of banking. Finally, the regulation clarified where an electronic bank is deemed to be ''located'' for purposes of national banking law.

c. Streamlining the OCC's Regulatory Processes

(1) Electronic Filings: e-Corp. The OCC has made effective use of technology to reduce the burden on national banks from the administrative processes necessary to obtain OCC approvals or file required notices. The OCC designed a new Web-based filing system, e-Corp, to facilitate such filings. The system, launched in 2003, enables national banks to complete, sign, and submit applications electronically to the OCC. Originally limited to four classes of filings, the OCC recently adopted a final rule that allows national banks, at their option, to make any class of licensing filings electronically.[49] E-Corp has reduced costs and regulatory burden for national banks by simplifying the filing of applications and notices and by providing easy, online access to much of the information that national banks need to complete such documents.

(2) Streamlined Assessments Computation. In 2006, the OCC issued a final rule streamlining the process national banks use to compute their

[45] *See* 72 FR 36550, July 3, 2007.

[46] *See* 72 FR 31441, June 7, 2007.

[47] An eligible national bank is one that is well capitalized under the OCC's rules and has a composite rating of ''1'' or ''2'' under the Uniform Financial Institutions Rating System with at least a rating of ''2'' for asset quality and for management. *See* 12 CFR 32.2(i).

[48] *See* 67 FR 34992, May 17, 2002.

[49] *See* 69 FR 1, January 2, 2004.

semiannual assessments.[50] The rule took effect on August 24, 2006. The revised regulation provides that the OCC, rather than the bank, calculates the assessment amount. The new procedures eliminated a cumbersome process for reviewing and correcting miscalculations.

(3) Streamlined Procedures for Community Development Investments. In 2003, the OCC amended its community development investment regulation at 12 CFR 24. (*See* 68 FR 48771, August 15, 2003.) The final rule provided for a streamlined, after-the-fact notice process for eligible banks making investments permissible under the authority of 12 U.S.C. 24 (Eleventh). The OCC undertook this step to make the filing process less burdensome on national banks, while ensuring that the OCC continued to receive information it needs for supervisory purposes.

(4) Streamlined Procedures for Federal Branches and Agencies. On December 19, 2003, the OCC published a final rule revising its international banking regulations. (*See* 68 FR 70691, December 19, 2003.) Consistent with the procedures available for domestic national banks, the final rule permitted federal branches and agencies of foreign banks in the United States to make additional regulatory filings through an after-the-fact notice, rather than a more detailed application, and streamlined review times for filings and applications. In addition, the final rule provided that foreign banks would operate under a single license, as is the case for domestic national banks, rather than having to obtain separate licenses for each federal branch or agency that a foreign bank operates in the United States; this latter change greatly simplifies the regulatory filing process for such offices of foreign banks.

d. Explaining Regulatory Requirements. The OCC's primary vehicle for explaining regulatory requirements to national banks is through our ongoing supervisory activities. All supervisory offices have frequent contact with the management and boards of the banks in their portfolios, allowing the OCC to inform banks of regulatory changes and requirements on an individual basis.

Timely and detailed OCC issuances explaining regulatory changes are distributed to all national banks, and are available for reference on our public Web site. Additionally, on a quarterly basis, the OCC provides all national banks with a comprehensive list and brief summary of issuances from the prior quarter. Bankers find this quarterly summary a valuable tool for ensuring that they are aware of new and changing regulatory requirements.

The OCC also sponsors extensive outreach forums for providing guidance to bankers on regulations, examination practices, and initiatives. These events range from small group meetings to larger regional sessions; the Comptroller himself is the primary speaker at many such sessions. The OCC supplements its outreach efforts by offering a variety of banker education seminars on topics including our risk assessment process, credit risk management, compliance risk management, and issues of particular interest to new national bank directors.

e. Risk-Based Supervision. The OCC employs a risk-based approach to supervision that distinguishes between large/mid-size banks and community banks to reflect the generally less complex activities of smaller institutions. Regardless of size and complexity, the primary focus is an evaluation of the bank's risk management system to determine its ability to identify, measure, monitor, and control risks. This evaluation is accomplished through an assessment of the bank's policies, processes, personnel, and control systems that tailors examination activities to the key characteristics of each bank, including products and services offered, volume of activities, markets in which it competes, and the board's and management's tolerance for risk.

4. The Office of Thrift Supervision

a. Application and Reporting Requirements. Based on comments received through the EGRPRA interagency review process, OTS issued an interim final rule in August 2005 to reduce the regulatory burden on savings associations by updating and revising various application and reporting requirements. These revisions included exempting certain highly rated savings associations from branch and home office application requirements and eliminating some application and notice requirements for branch relocations and agency offices. OTS also conformed the various application publication requirements and public comment periods to the extent permissible under statutory requirements. This final rule revised the agency's procedures for formal and informal meetings as well as eliminated a number of OTS rules that no longer served a useful regulatory purpose.

Specifically, the final rule:

- Modified the branch office and agency office application and notice requirements,
- Harmonized publication and public comment procedures for various applications and notices, and
- Revised the meeting procedures.

OTS also amended 12 CFR 528.4 to require displays of the equal housing logotype and legend only in advertisements for housing related loans. The equal housing lender logotype did not provide relevant information to individuals shopping for loans unrelated to housing. As a result, the former rule imposed an unnecessary burden on savings institutions who must provide the information, and on consumers who must process this information in addition to the volume of other data that they receive in connection with consumer and commercial loan applications. OTS also noted this rule change promotes consistency with related rules issued by the other banking agencies, which require the display of the equal housing lender logotype and legend only with respect to advertisements for housing-related loans.

In addition to the burden-reducing changes discussed above, the final rule eliminated the following regulations:

- 12 CFR 545.74. This rule imposed various requirements on securities brokerage activities of service corporations. The requirements were obsolete, conflicted with the current law and guidance, and were confusing to the industry.
- 12 CFR 563.181. This rule required mutual savings associations to report changes in control. It implemented section 407 of the National Housing Act, which was repealed in 1989.
- 12 CFR 563.183. This rule required savings associations and savings and loan holding companies to report changes of chief executive officers and directors that occur with stated time periods before or after a change of control. This rule implemented 12 U.S.C. 1817(j)(12), which requires notices under more limited circumstances. OTS will rely on the more limited statutory requirements.
- 12 CFR 567.13. This rule addressed capital maintenance agreements and was obsolete in light of other statutory and regulatory protections.

b. Transactions With Affiliates. In December 2002 and October 2003, OTS issued final rules revising its existing rules implementing section 11 of the HOLA which applies sections 23A and 23B of the Reserve Act to savings associations. These final rules revised OTS's existing rules to incorporate applicable provisions of the Board's Regulation W to savings associations. Among other things, OTS's transactions with affiliates (TWA) rules conform the

[50] *See* 71 FR 42017, July 25, 2006.

definition of ''affiliate'' to more closely correspond to the Regulation W definition thus making application more uniform among the federal regulators. This change generally reduced the scope of entities that would be deemed thrift affiliates. Historically, OTS also had incorporated certain presumptions of control from part 574 into the definition. By amending its TWA rules, OTS eased regulatory burden by issuing a set of rules that tend to be less restrictive than the agency's historical standards.

c. Examination Efficiencies and Electronic Initiatives. Recognizing that on-site examinations represent the single biggest area of regulatory burden on the industry, OTS continues to undertake initiatives to reduce the burden of the supervisory and examination process.

(1) Comprehensive Exams. OTS has reduced regulatory burden through the comprehensive examination process. This comprehensive approach has improved the examination process by combining the safety and soundness and compliance functions. Instead of having two separate examination teams, now OTS has one exam team on site at one time during the year to perform safety and soundness and compliance review. The comprehensive exam process produces one exam report and a more comprehensive assessment of an institution's risk profile.

(2) Risk-Focused Exams. OTS also has a risk-focused examination approach that contemplates that the management review should generally be the focus of the examination on noncomplex thrifts that have a modest risk profile and sustained performance within industry norms. OTS examiners have the flexibility to tailor the depth of review depending on the level of risk and complexity of each of the CAMELS and compliance components.

(3) Electronic Communication. OTS is continuing to improve its electronic communication channels to make electronic transmission of examination data even more effective. These improvements include installation of virtual private network software on the examiners' notebook computers to enable them to securely access OTS systems and data over high-speed, broadband connections from a savings association or other locations.

(4) Electronic Preliminary Examination Response Kit. OTS also converted the Preliminary Examination Response Kit documents to electronic forms that may be completed by the association and returned electronically for examiners to use in performing examinations. The files may be provided to OTS through a Secure Messaging Center or on a compact disc. To facilitate the timely transmission of sensitive data and information, OTS designed the Secure Messaging Center to meet industry standards for secure electronic data exchange.

(5) Off-Site Exam Work. Through expanded use of electronic information, OTS envisions even greater opportunities to use high-speed access from savings associations or remote locations to reduce the burden on staff and facilities and ultimately reduce the amount of on-site time during examinations.

d. Directors' Responsibility Guide and the Directors' Guide to Management Reports. In 2006, OTS issued updated versions of the Directors' Responsibility Guide and the Directors' Guide to Management Reports to highlight OTS's supervisory expectations for a strong, consistent approach towards sound corporate governance practices, as well as the importance of strong, independent boards of directors.

The updated Directors' Guide adds a new section on statutory and regulatory responsibility and clarifies the issue of blurred lines of responsibility between the board and management. This is an area where the industry had raised questions and OTS determined that additional clarity would reduce uncertainty and regulatory burden. There is also a chart on the applicability of selected SOX requirements. The streamlined, restructured Guide to Management Reports consolidates some existing reports and adds additional red flags to monitor internal controls and financial performance.

e. Thrift Financial Report. OTS is a member of the interagency FFIEC Reports Task Force that works to help ensure reporting uniformity among the agencies. Nevertheless, differences between the Thrift Financial Report (TFR) and the Call Report remain. These differences relate to the housing and mortgage focus of the thrift industry and the fact that OTS uses TFR data as input for its interest rate risk model used to measure and monitor interest rate risk. OTS continues to study the feasibility of adopting the Call Report, perhaps with certain additional reports that would allow OTS to monitor interest rate risk and mortgage loan changes and trends.

f. Ongoing Efforts to Communicate. Ongoing outreach efforts outside of the exam process are also essential to improving communications. OTS regularly sponsors ''town meetings'' at which our regional directors discuss pressing issues and solicit input from thrift managers.

(1) Agency Web Site. In an effort to further relieve compliance burdens, OTS makes information available to all through the agency Web site. Savings associations can find comprehensive contact information for all program areas in addition to the following:

- Relevant statutes and CFRs
- Guidance
- Proposed and final rules
- Public comments
- Handbooks
- TFR/Call Report data and instructions
- Expanded List of Permissible Activities
- Industry trends and analysis

g. Savings and Loan Holding Companies.

OTS has a well-established program for discharging its statutory responsibilities with respect to savings and loan holding companies. The holding companies that OTS regulates range from non-complex shell companies to very large, internationally active conglomerates. OTS's seamless supervision at all levels of an organization—at the bank level as well as at savings and loan holding companies—ensures a comprehensive supervisory regime with minimal regulatory overlap. Any company that owns or controls a savings association (other than a bank holding company) is subject to OTS supervision up to and including the top-tier parent company. OTS has top-tier holding company supervisory responsibility over groups that contain both financial and industrial lines of business. Household names like General Electric, AIG, American Express, and GMAC are all thrift holding companies and subject to consolidated supervision by OTS. Many of these groups are also subject to the European Union Financial Conglomerates Directive. OTS has worked hard over the past several years to improve and enhance its coordination and communication with the global supervisory community—and this remains a priority for the organization.

E. Conclusion

EGRPRA served as an impetus for all of the Agencies to review their regulations in-depth and to work collaboratively on a number of regulatory burden reduction matters, to develop a consensus on desirable legislative reforms, and to work together with Congress to pass legislation that will help reduce the level of burden on financial institutions.

The Agencies benefited from the synergy created by Congress's consideration of regulatory burden relief legislation for the banking industry.

Therefore, the EGRPRA process allowed the federal banking agencies to identify other specific proposals for which there was broad support among the Agencies and to refine those proposals that were already being considered by the Agencies (such as development of model privacy notices). This process also provided the opportunity to review proposals with the industry, consumer groups, and other interested parties.

While the FSRRA was an important step in addressing regulatory burden, the Agencies believe it is important for Congress to continue to look for ways to reduce any unnecessary regulatory burdens on banking organizations. As noted in this report, each agency developed or supported a number of legislative burden reducing proposals that ultimately were not included in the FSRRA. Congress may find these proposals a useful starting point in considering additional regulatory relief measures in the future.

Appendix I–A: The Financial Services Regulatory Relief Act of 2006

The Senate Banking, Housing, and Urban Affairs Committee (Senate Banking Committee) and the House Financial Services Committee have worked for several years to craft appropriate regulatory burden reduction legislation. Agency principals and other senior level officials of the Agencies testified before these committees on seven different occasions over the last four years. At those hearings, agency representatives testified regarding a wide variety of regulatory burden reduction legislative proposals, many of which were incorporated into the FSRRA. In addition, upon request, agency representatives offered technical assistance to congressional staff in connection with the development of that Act, which was enacted on October 13, 2006.

Among the items included in the FSRRA that will reduce the regulatory burden on financial institutions are the following: [51]

1. Provides for joint rules to be issued to implement the bank ''broker'' exceptions adopted as part of the GLBA. Section 101 of the FSRRA requires that the SEC and the Board, in consultation with the OCC, FDIC and OTS, adopt a single set of rules to implement the ''broker'' exceptions for banks in section 3(a)(4)(B) of the Securities Exchange Act of 1934. In December 2006, the Board and the SEC jointly requested comment on a proposed single set of rules to implement these exceptions. *See* 71 FR 77522, December 26, 2006.

2. Reduces reporting requirements currently imposed on banks and their executive officers and principal shareholders related to lending by banks to insiders. Section 601 of the FSRRA amended section 22(g) of the Federal Reserve Act [52] and section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 [53] to eliminate several reporting requirements currently imposed on federally insured banks and savings associations, their executive officers, and principal shareholders.

The Agencies determined that these particular reports did not contribute significantly to the monitoring of insider lending or the prevention of insider abuse. Identifying and reviewing insider lending will continue to be conducted as part of the normal examination and supervision process, and the amendments will not alter the restrictions on insider loans or limit the authority of the Agencies to take enforcement action against a bank or its insiders for violations of those restrictions.

3. Streamlines Consolidated Reports of Condition by requiring that the federal banking agencies periodically review the information and schedules required to be filed by insured depository institutions. Section 604 of the FSRRA amended section 7(a) of the FDI Act [54] to require that, within one year after enactment of the FSRRA and at least once every five years thereafter, each federal banking agency, in consultation with the other agencies, shall routinely review both the burdens and benefits associated with Call Report information requirements so as to reduce any unnecessary burden.

4. Streamlines merger application requirements and exempts certain merger transactions from competitive factors review and post-approval waiting periods. Section 606 of the FSRRA amended section 18(c) of the FDI Act [55] (the Bank Merger Act) to eliminate the requirement that each federal banking agency request a competitive factors report from the other three federal banking agencies as well as from the Attorney General in connection with the bank mergers. Instead, the amendment allows the agency reviewing the Bank Merger Act application to request a report only from the Attorney General and to provide a copy of this request to the FDIC as insurer.

This section also modifies the Bank Merger Act to exempt certain merger transactions between an insured depository institution and one or more of its affiliates from both the competitive factor review process and the post-approval waiting period. This type of merger generally is considered to have no material effect on competition.

5. Provides an inflation adjustment for the small depository institution exception under the Depository Institution Management Interlocks Act. Section 610 of the FSRRA amended section 203(1) of the Depository Institution Management Interlocks Act which prohibits depository organizations from having interlocking management officials, if the organizations are located or have an affiliate located in the same Metropolitan Statistical Area, Primary Metropolitan Statistical Area, or Consolidated Metropolitan Statistical Area. Prior to the FSRRA, this prohibition did not apply to depository organizations with total assets of less than $20 million. The Agencies proposed that this total asset threshold for the MSA exception be raised to $100 million. The FSRRA raised the threshold to $50 million.

6. Authorizes the Board to pay interest on reserves. Section 201 of the FSRRA gives the Board express authority, effective October 1, 2011, to pay interest on all types of balances (including required reserves, supplemental reserves and contractual clearing balances) held by or for depository institutions at the Federal Reserve Banks.

7. Increases flexibility for the Board to establish reserve requirements. Effective October 1, 2011, section 202 of the FSRRA gives the Board the discretion to set reserve requirements for transaction accounts below the ranges established in the Monetary Control Act of 1980.

8. Enhances examination flexibility. Section 605 of the FSRRA and related legislation amended section 10(d) of the FDI Act [56] to permit insured depository institutions that have up to $500 million in total assets, and that meet certain other criteria, to qualify for an 18-month (rather than 12-month) on-site examination cycle.[57] These legislative

[51] For those provisions affecting mainly credit unions, please refer to the NCUA report in Part II.

[52] 12 U.S.C. 375a.

[53] 12 U.S.C. 1972(2).

[54] 12 U.S.C. 1817(a).

[55] 12 U.S.C. 1828(c).

[56] 12 U.S.C. 1820(d).

[57] In addition to the size criteria, an institution is eligible for the extended examination cycle if it is well capitalized, has not undergone a recent change in control, is not subject to a formal enforcement proceeding, and has been assigned a management and a composite rating of ''1'' or ''2'' under the Uniform Financial Institutions Rating System at its most recent examination.

changes will potentially permit more well-capitalized and well-run small institutions to qualify for less-frequent examinations.

9. Provides for the simplification of dividend calculations for national banks. Section 302 amended section 5199 of the Revised Statutes of the United States [58] to simplify dividend calculations for national banks and provide more flexibility to a national bank to pay dividends as deemed appropriate by its board of directors. Previously, the payment of dividends was subject to a complex formula.

10. Repeals the loans-to-one borrower limitations for savings associations in section 5(u)(2)(A) of the Home Owners' Loan Act.[59] Section 404 eliminated the loans-to-one borrower provision that restricts loans by savings associations to develop domestic residential housing units to a $500,000 per unit for each single-family dwelling unit, while retaining the overall limitation for a residential development of the lesser of $30 million or 30 percent of the unimpaired capital and unimpaired surplus.

11. Allows savings associations to invest in bank service companies under the Bank Service Company Act [60] and expands the locations at which a bank service company may provide services that are permissible for each of its investing members.

12. Amends federal law to facilitate and coordinate the supervision of state banks operating across state lines by the bank's home and host state bank supervisors. For example, section 711 of the FSRRA amends section 10(h) of the FDI Act [61] to provide for a host state bank supervisor to exercise its supervisory and examination authority in accordance with any cooperative agreement between the host state and home state bank supervisors.

13. Authorizes member banks to use pass-through reserve accounts. Section 603 of the FSRRA permitted member banks to count as reserves deposits in other banks that are passed through by those banks to the Board as required reserve balances, rather than requiring a member bank to maintain its reserves either in an account at a Federal Reserve Bank or as vault cash.

14. Amends the Securities Exchange Act of 1934 and the Investment Advisors Act of 1940 to remove the duplicative oversight burden and to provide savings associations with the same exemptions from registration and reporting requirements currently provided to banks.

Appendix I–B: Methodology of the Agencies' EGRPRA Review Process

This interagency review formally began in 2003, under the leadership of then-FDIC Vice Chairman (now OTS Director) John Reich, whom FFIEC asked to chair this effort. The three-year process included a review of almost all of the Agencies' 131 regulations in an effort to reduce regulatory burden, where appropriate, or to recommend statutory changes to reduce burden when the Agencies lack authority to do so unilaterally.

Under Mr. Reich's leadership, the Agencies established an interagency EGRPRA Task Force consisting of senior-level representatives from each of the Agencies. In accordance with statutory requirements, the federal banking agencies have categorized and divided their regulations into 12 categories by type.[62]

The statute requires that the Agencies publish one or more categories of the regulations for public comment on a periodic basis. The requests for comment should ask commenters to identify regulations that are outdated, unnecessary or unduly burdensome.

The EGRPRA Task Force recommended, and the Agencies agreed, to put one or more categories out for public comment every six months, with 90-day comment periods, for the remainder of the review period that ended in September 2006. The Agencies decided that spreading out comments over three years would provide sufficient time for the industry, consumer groups, the public and other interested parties to provide more meaningful comments on our regulations, and for the Agencies to carefully consider all recommendations.

The table below indicates which categories of regulations were published in each of the six **Federal Register** notices, as well as the dates they were issued:

Federal Register Notice	Sought comment on:	Issue date
First	The Agencies' overall regulatory review plan, as well as the following initial three categories of regulations for comment: Applications and Reporting; Powers and Activities; and International Operations. (*See* 68 FR 35589.)	06/16/2003
Second	The lending-related consumer protection regulations, which included Truth-in-Lending (Regulation Z), Equal Credit Opportunity Act (ECOA), Home Mortgage Disclosure Act (HMDA), Fair Housing, Consumer Leasing, Flood Insurance and Unfair and Deceptive Acts and Practices. (*See* 69 FR 2852.)	01/20/2004
Third	The consumer protection regulations that relate primarily to deposit accounts/relationships. (*See* 69 FR 43347.)	07/20/2004
Fourth	The regulations related to anti-money laundering, safety and soundness, and securities. (*See* 70 FR 5571.)	02/03/2005
Fifth	The regulations related to banking operations; directors, officers and employees; and rules of procedure. (*See* 70 FR 46779.)	08/11/2005
Sixth	The Agencies' Prompt Corrective Action regulations as well as the rules relating to the disclosure and reporting of CRA-related agreements. (*See* 71 FR 287.) Since the Agencies had recently sought public comment of the burdens associated with their general capital and CRA rules, the Agencies did not seek further burden reduction comments on those rules	01/04/2006

The Agencies readily recognized that consumer and public insight into regulatory burden issues would be critical to the success of their effort. Consequently, the regulatory agencies tried to make it as convenient as possible for all interested parties to receive information about the EGRPRA project and to comment on what they thought were the most critical regulatory burden issues.

[58] 12 U.S.C. 60.

[59] 12 U.S.C. 1464(u)(2)(A).

[60] 12 U.S.C. 1842 and 1863.

[61] 12 U.S.C. 1820(h).

[62] As discussed in Part II, NCUA prepared comparable categories of its rules affecting credit unions.

EGRPRA Web Site

The Agencies established an EGRPRA Web site (*http://www.egrpra.gov*). The Web site provides an overview of the EGRPRA review process, a description of the Agencies' action plan, information about our banker and consumer outreach sessions, and a summary of the top regulatory burden issues cited by bankers and consumer groups. The Web site also includes direct links to the actual text of each regulation and a button for relaying comments. Comments submitted through the Web site were automatically transmitted to each of the Agencies. Comments were then posted on the EGRPRA Web site for everyone to see. The Web site proved to be a popular source for information about the EGRPRA project, with thousands of ''hits'' being reported every month.

While written comments were important to the Agencies' efforts to reduce regulatory burden, the Agencies believed that it was also important to have face-to-face meetings with bankers and consumer/community group representatives so that they would have an opportunity to directly communicate their views to the regulators on the issues that most concern them.

Outreach Meetings

The federal banking agencies decided to sponsor a total of 10 banker outreach meetings in different cities around the country to heighten industry awareness of the EGRPRA project. The meetings provided an opportunity for the Agencies to listen to bankers' regulatory burden concerns, explore comments and suggestions, and identify possible solutions.

More than 500 bankers (mostly CEOs) and representatives from the American Bankers Association, America's Community Bankers, Independent Community Bankers of America, the Conference of State Bank Supervisors (CSBS), as well as representatives from numerous state trade associations participated in the meetings. In addition, more than 70 representatives from the Agencies, CSBS, and the state regulatory agencies participated. The Agencies believe that the banker outreach meetings were useful and productive. Summaries of the issues raised during those meetings were posted on the EGRPRA Web site.

The Agencies also co-sponsored three outreach meetings specifically for consumer and community groups. Representatives from a number of consumer and community groups participated in the meetings along with representatives from the Agencies and CSBS. Those meetings produced many suggestions and provided a useful perspective on the effectiveness of many existing regulations.

Finally, the Agencies sponsored three joint banker and consumer/community group focus group meetings in an effort to develop greater consensus among the parties on legislative proposals to reduce regulatory burden.

The Agencies found these outreach and focus group meetings to be extremely helpful in identifying the most burdensome regulations for the industry, discussing possible solutions and understanding the concerns of consumer and community groups about changing certain provisions of the current law and regulations.

Appendix I–C: Summary of Comments, by Federal Register Notice Release and by Subject Matter for the Federal Banking Agencies

*I. **Federal Register** Notice Release No. 1: Applications and Reporting, Powers and Activities, and International Operations*

(Note: The notice also requested comment on the overall EGRPRA process.)

A. General Comments

1. Regulatory Burden. The federal banking agencies received general comments on regulatory burden through the **Federal Register** notice process as well as during the various Bankers Outreach meetings.

One commenter was appreciative of recent efforts to reduce the regulatory requirements on small institutions and encouraged regulators to continue reviewing regulations and making exceptions for smaller institutions. Another industry group commenter was concerned that small institutions are still disproportionately burdened because they cannot afford to hire more employees to comply with the volume of regulation. The same commenter complained that credit unions do not have to pay the taxes that small institutions pay.

Most bankers asserted that, while the compliance burden is particularly taxing on small institutions, reducing regulatory burden would assist banks of all sizes in refocusing on their core mission: Meeting the financial needs of the public while providing value to stakeholders at all levels.

Many other commenters were concerned with the increased burden associated with the consumer regulations, SARS/CTR filings, BSA compliance, and PATRIOT Act, some of which is not exclusively related to banking.

2. Examination Burden. During the outreach meetings, bankers asked the federal banking agencies to better coordinate examinations, particularly at banks that are regulated by multiple agencies, such as the State, Board, and FDIC. They explained that the burden is especially difficult for management and directors of affiliated institutions because examiners seem to be in one or more of the institutions all of the time conducting different types of exams. They complained that preparing pre-exam packages and responding to examiner questions is time consuming for management. On the other hand, they applauded the exams where the state and federal regulators worked together. Bankers also suggested that regulators use the findings of the safety and soundness examination to determine the need for, and scope of, specialty area examinations.

One commenter suggested that the federal banking agencies adopt a risk-based or two-tiered approach based on an institution's size and complexity of operations. While another industry commenter complained about the amount of examination time spent when the institution and the examiners struggle to interpret complex compliance rules.

3. Continuous Regulation Review. A few commenters encouraged the federal banking agencies to use sunset provisions to regularly review the need for regulations. One commenter cited the newly proposed identity theft regulations as an example of a regulation that needs to be reevaluated on a regular basis.

Another commenter requested that the FDIC lead an effort to bring together regulators, bankers, legislators, and consumers to review all consumer regulations to streamline the disclosure process, so that consumers receive disclosures that are meaningful and concise. More specifically, the commenter recommended:

• Implementing burden reduction recommendations that are rule changes and do not require legislative action to implement needed changes faster.

• Improving guidance from the Agencies so that it is clear and consistent.

B. Powers and Activities

1. Activities of Insured State Banks. Part 362 of the FDIC rules and regulations implement section 24 of the FDI Act that restrict and prohibit insured state banks and their subsidiaries from engaging in activities and investments that are not permissible for national banks and their subsidiaries. Some of the commenters

questioned the need for FDIC review of subsidiary activities that are not permissible for a national bank, terming the requirement unclear.

2. Bank Holding Companies and Financial Holding Companies. Two industry trade association commenters urged the Board to revise its Small Bank Holding Company Policy Statement in Regulation Y to increase the asset-size cap from $150 million to $500 million or $1 billion for purposes of defining a ''small bank holding company.'' One commenter also encouraged the Board to revise the Statement to increase the debt-to-equity ratio from 1:1 to 3:1 as the threshold for dividend payment restrictions, because purchasers of small banks frequently need to borrow all or a substantial portion of the purchase price.

A commenter also urged the Board to revise Regulation Y to remove restrictions on the activities of a subsidiary of a subsidiary bank of a bank holding company (BHC). The commenter noted that these restrictions have created competitive inequities, in some cases, by preventing subsidiaries of state member banks with a BHC from engaging in activities in which subsidiaries of state nonmember banks may engage under relevant state law, including activities approved by the FDIC for state nonmember banks and their subsidiaries.

Several commenters, including industry trade associations, stated that a BHC that is not a financial holding company (FHC) should be authorized to conduct an expanded scope of insurance agency activities directly or through a nonbanking subsidiary, rather than indirectly through a subsidiary bank that is authorized under state law to engage in such activities. Two commenters contended that BHCs that are well managed and well capitalized and that have satisfactory CRA performance records should be allowed to engage in the broader range of activities permitted for FHCs, including securities and insurance underwriting, even if the BHCs have chosen not to become FHCs. They also stated that such BHCs should be permitted to file post-notices for proposals to engage in permissible nonbanking activities to the same extent that FHCs can file post-notices.

In addition, one commenter urged the Board to amend the FHC rules in Regulation Y that relate to organizing, sponsoring and managing mutual funds (12 CFR 225.86(b)(3)) to remove the requirement that a FHC reduce its ownership in a fund to less than 25 percent of the fund's equity within one year of sponsoring the fund. The commenter asserted that such restriction was unduly burdensome, because it was not mandated by the GLBA and appeared to result unnecessarily in more limited authority for an FHC's domestic mutual fund activities than what currently is authorized under the Board's Regulation K for mutual fund activities conducted abroad.

An industry trade association commenter also stated that the statutory cross-marketing prohibitions on subsidiary depository institutions of an FHC should be revised to apply only with respect to cross marketing of products and services of a company in which the FHC holds a controlling interest of more than 25 percent.

3. State Member Banks. To help ease burden on state member banks with excess capital, a commenter requested that the Board eliminate the restriction in Regulation H on dividend payments (12 CFR 208.5) for well-capitalized banks that will remain well capitalized following payment of the dividends. Another commenter asserted that the branching and investment authority for state member banks should not be limited to what is permissible for a national bank.

4. Community Development Corporations, Community Development Projects, and Other Public Welfare Investments. One commenter suggested that the OCC should reduce the burden of the self-certification requirement for public welfare investments, either by waiving the requirement for well-managed national banks with an Outstanding CRA performance rating, by creating a *de minimis* level below which no certification is required, or by establishing a like-kind investment exception similar to that found in 12 CFR 5.

Also, the commenter stated that federal savings associations should be able to invest in community development entities to the same extent as national banks. Under current law, savings associations may only make such investments through a service corporation. Because many savings associations do not have service corporations, this limits their ability to serve low- and moderate-income communities.

Another commenter stated that the Board should update its regulatory interpretation on community welfare investments (12 CFR 225.127) to reference the quantitative limits on those investments that would not require prior Federal Reserve System (FRS) approval in terms of a percentage of the BHC's consolidated Tier 1 and Tier 2 capital plus the balance of the allowance for loan and lease losses excluded from Tier 2 capital. Currently, the interpretation provides that a BHC, directly or indirectly, may make community welfare investments up to 5 percent of the BHC's consolidated ''capital stock and surplus'' without FRS approval.

5. Financial Subsidiaries. Several commenters proposed removing certain limits on financial subsidiaries of banks, such as:

- The requirement that each of the 100 largest banks must maintain a top-three debt rating in order to hold a financial subsidiary.
- The prohibition on insurance underwriting and real estate development activities in a financial subsidiary.
- The requirements that financial subsidiaries not be treated as ordinary subsidiaries for capital, 23A/23B, and anti-tying purposes.

6. OCC Lending Limits. One commenter urged the OCC to include agricultural loans in the categories of loans eligible for higher lending limits under an OCC pilot program allowing eligible national banks to take advantage of higher lending limits for small business loans and residential real estate loans. The commenter further urged that the $500,000 cap contained in the CRA regulation and Call Report instructions not apply in such cases.

7. Debt Cancellation Contracts and Debt Suspension Agreements. One commenter proposed that the OCC make permanent the temporary suspension of rules regarding banks offering a periodic payment option and associated disclosures to Debt Collection Contracts (DCCs) and Debt Suspension Agreements (DSAs) sold by unaffiliated, nonexclusive third parties in connection with closed-end consumer loans. The same commenter stated that the OCC should extend the exception to all consumer loans, other than real estate loans, regardless of how such loans are sold.

One commenter stated that the OCC should retain its regulations concerning DCCs and DSAs.

8. Investment. One commenter proposed that the OCC revise 12 CFR 1.3(h) to permit a national bank to purchase (without OCC approval) for its own account shares of an investment company or other entity, provided that (1) the portfolio of assets of the investment company or other entity consists exclusively of assets that a national bank may purchase and sell for its own account and (2) the bank's holdings of such shares do not exceed the limits set forth in section 1.4(e) of the regulations. The commenter likewise proposed expanding the

definition of investment company in 12 CFR 1.1(c) to include entities that are exempt under section 3(c)(1) of the Investment Company Act.

One commenter proposed amending the Investment Adviser's Act to exclude savings associations from the definition of investment adviser.

9. Dividend Payment. A commenter proposed that, for national banks with a single shareholder, dividends payable in property other than cash should not require the prior approval of the OCC under 12 CFR 5.66, if the property is dividended at fair market value, the dividend does not exceed the limits set out in 12 U.S.C. 60, and the dividend comprises an ''insubstantial amount'' (less than 1 percent) of the bank's capital and surplus.

10. Branching. One commenter proposed that 12 U.S.C. 36(g)(1) and 1828(d)(4)(A) should be revised to allow national banks to engage in *de novo* interstate branching to the same extent as savings associations. They also recommended elimination of the states' authority to prohibit an out-of-state bank or BHC from acquiring an in-state bank that has not existed for at least five years. Another commenter proposed that the FDIC thoroughly examine the procedures for a bank to close a branch and notify its customers, and determine whether there are ways to make the process less onerous.

11. Real Estate Lending. One commenter suggested an amendment to 12 U.S.C. 1464(c)(2)(B)(i) to increase the statutory limit for loans secured by nonresidential real property and/or that OTS establish practical guidelines for non-residential real property lending at levels exceeding 400 percent of capital.

Another commenter suggested elimination of the $500,000 per unit purchase price limit contained in section 1464(u)(2) of the HOLA. Another commenter suggested that the other real estate owned standards be amended to provide greater flexibility to banks, including allowing them to lease a property when they cannot dispose of it rapidly.

12. Fiduciary Powers. One commenter stated that the SEC's final rule to implement the safe harbors for traditional trust activities and other services performed by financial institutions should apply to savings banks and savings associations and should not impose unnecessary burdens on community banks engaged in fiduciary activities.

13. Scope of Investment Advisers Act. One commenter stated that the Investment Advisers Act of 1940 and its regulations burden savings associations unfairly, because savings associations and savings banks are not exempt from the definition of investment adviser. The commenter proposed amending the Investment Advisers Act to exclude savings associations from the definition of investment adviser.

14. Application of Interest Rate Exportation Doctrine to Banks with Multi-State Branches. Two commenters expressed concerns about agency guidance on interest rate exportation. The commenter noted that the guidance varied between OTS, OCC, and FDIC, and that its application could vary by transaction. The commenter recommended that the Agencies clarify that banks could use their home state interest rates regardless of the contacts (or lack thereof) between the home state and the loan. The Agencies should further clarify the factors that the institution needs to consider when they use the rate of a state other than the home state. The commenter said that the Agencies should issue a new joint rule to clarify these issues. The federal banking agencies also should review their interpretations concerning what constitutes ''interest'' under the export doctrine, to ensure consistency.

15. Consumer Lending Limits for Savings Associations. One commenter, without recommending a particular change, noted that savings associations are developing business strategies that require more flexible consumer loan limits. The commenter urged OTS to review HOLA to see whether the agency could provide additional flexibility without amending the statute.

16. Savings Association Business Lending Authority. One commenter suggested that federal savings associations be permitted to fully engage in small business lending and that the lending limit on other business loans be increased to 20 percent of assets. Expanding the business lending authority of federal savings associations would help to increase small business access to credit and expand the amount of loans made to small and medium-sized businesses.

17. Bank Service Company Act. One commenter proposed amending both the Bank Service Company Act and HOLA to provide parallel investment authority for banks and savings associations to participate in both bank service companies and savings association service corporations.

18. Eliminate Loan-to-One Borrower Residential Housing Exception. A commenter asserted that the $30 million/30 percent of all capital limits on residential lending for federal savings associations is sufficient to prevent concentrated lending to one housing developer and the per-unit cap ($500,000) is excessive. The commenter stated that OTS should either eliminate the per-unit cap or index it to inflation.

C. Applications and Reporting

Commenters recommended changes to ease regulatory burden relief in the applications and reporting area.

1. Applications (generally). Some commenters suggested general changes in the applications area, including both legislative and regulatory changes. These changes included:

- Providing expedited application/notification requirements for well-capitalized and well-managed banks with satisfactory CRA performance record ratings.
- Expediting application review and processing time, including by delegating certain applications to regional offices.
- Allowing electronic applications filing.
- Publishing a list of approved or denied activities.
- Handling routine applications, such as branch applications, as after-the-fact notice filings.
- Exempting well-capitalized savings associations from dividend notice requirements.
- Eliminating the requirement that a BHC receive prior FRS approval to acquire additional shares of a subsidiary BHC (such as when a BHC's ESOP that is a registered BHC wants to purchase additional shares of the BHC).
- Converting applications (such as new branch applications) to after-the fact notices.

Some of the other changes that industry commenters suggested to improve the applications process included:

- Making publication requirements for different applications consistent.
- Terminating current requirements for applicants/notificants to publish announcements of their regulatory filings in newspapers, because few people read the newspaper notices, such publications are expensive, and publication delays can lengthen processing times.
- Changing the Board's *ex parte* contact policy regarding protested applications to be consistent with the other Agencies' policies on protested applications.
- Allowing institutions to incorporate by reference previously filed documentation, with updates or certification of continued accuracy.
- Recognizing the distinction between internal restructuring and acquisition of a non-affiliated entity, with lesser information requirements for the former.
- Reconsidering the positions of the OCC and the Board that commonly

advised mutual funds or other investment funds are considered ''acting in concert,'' and thereby subject to Change in Control (CIC) notice requirements, whenever a fund family collectively acquires 10 percent or more of a bank or bank holding company. In addition, a fund's ownership of shares should not be attributed to the investment advisor (or its parent organization) for purposes of the CIC regulations.

2. Bank Merger Act Applications. Many industry commenters suggested that the Agencies make their merger reviews more consistent with reviews by the Department of Justice or ask Congress to provide the Agencies with sole authority to conduct competitive analysis of bank mergers. In addition, credit union deposits should be included in the anti-competitive analysis of mergers because credit unions are active competitors with banks. Case-by-case analysis of such deposits imposes burdens on the applicant. Credit unions are full competitors with banks.

In addition, another industry commenter recommended the following suggestions to ease the burden associated with the Bank Merger Act (BMA):

- Applying BMA streamlined filing procedures and timeframes to mergers between qualified banks and their affiliates.
- Clarifying that transfers of ''substantially all'' assets would not be subject to the BMA if the transfer does not materially impact the institution.
- Establishing a BMA *de minimus* exception for affiliate transfers of deposit liabilities.

3. OCC Business Combination Rule. One commenter noted that the OCC's business combinations rule (12 CFR 5.34) permits nonbank subsidiaries to merge into national banks, but the FDIC's regulations require the filing of an application with the FDIC and require the publication of notice and an opportunity for public comment on such transactions. The commenter said that the FDIC should eliminate the notice and opportunity for comment requirements as unnecessary when the merging entity is a wholly owned bank operating subsidiary. Alternatively, the FDIC should be able to waive these requirements on a case-by-case basis.

4. Savings and Loan Holding Company Applications. One commenter suggested that OTS revise the publication requirements for Form H(e) applications to conform to those included in the BMA. The same commenter suggested that OTS revise the requirements of Items 110.20(d) and 220.30 of the Form H(e) application to request a list limited to those affiliated persons (as defined in 12 CFR 561.5) who are officers participating in major policy making functions of the applicant (especially where the applicant's stock is publicly held and no shareholder owns or controls more than 10 percent of the outstanding shares of stock). Similarly, another commenter urged OTS to streamline its Form H(e) application process if the thrift is highly rated and well managed. This commenter urged OTS to streamline the requirements of Item 110.40 where the application is for an internal reorganization. Likewise, OTS should limit or eliminate the requirements of Item 210.20 when the applicant is well known; the information is readily available to OTS in other reported materials, and in situations involving an internal reorganization. The commenter also proposed that OTS eliminate Item 210.50 when the applicant is well known to OTS.

This commenter also proposed that OTS revise Item 410.10(c) to request information only on those management officials the board has designated as participants in major policy making functions. Similarly, OTS should eliminate the requirements of Item 410.20 for those transactions involving holding companies whose directors are elected by shareholders, if the shares of the company's stock are publicly held and widely traded.

For corporate reorganizations, OTS should streamline the requirements of Item 510.10. One specific suggestion was to eliminate the requirements of Item 510(a)(1) in transactions involving an applicant familiar to OTS, in corporate reorganizations, and for savings associations operating in relatively small geographic areas. Similarly, OTS should streamline the requirements of Item 620.10 for corporate reorganizations. Finally, this commenter recommended that OTS limit Items 720.10 and 720.30 to a request for those locations affected by the transaction, where the transaction involves a large savings association and/or an applicant that is well known to OTS.

Commenters encouraged OTS to consider several other changes to their rules including:

- Eliminating the requirement for formal meetings/hearings on applications when a commenter asks for one.
- Placing additional controls on the 30-day notice period for well-managed, well-capitalized thrifts to avoid the notice becoming a de facto application process without any set deadline and clarifying the conditions upon which such notice will become an application.
- Amending its mutual holding company regulations and guidance and its mutual-to-stock conversion regulations.
- Allowing an application/notice waiver process for transactions reviewed by another regulator.
- Changing the Change-in-Control regulations to be consistent with the other Agencies.

5. Reports (generally). Other comments more specifically applied to the reporting area. The general comments about reporting requirements included the following suggestions:

- Apply the materiality threshold for reporting purposes consistently across different regulatory reports.
- Clarify why certain data is collected.
- Revise the Summary of Deposits report instructions and definitions to reflect the types of branches that have come into use since emergence of interstate banking.

6. Report Inconsistencies. Several industry commenters would like to see more consistency between Call Report schedules and FRY–9C schedules. They offered the following additional steps to reduce regulatory burden:

- Permit banks to submit one form and require Agencies to share the data since the two reports are practically identical and are compared to each other for discrepancies.
- Reconcile inconsistencies between the two reports to eliminate the burden of formatting and calculating the same financial data for different reports. For example, there are inconsistencies in the Income Statement, Interest Sensitivity data on various schedules, Past Due & Nonaccruals, and various memoranda items. There are also inconsistencies between the data definitions of the Call Report and FR–2416.
- Classify all overdrafts with the appropriate loan category on Schedule C or classify them as ''all other loans.'' Currently both reports require classification of overdrafts as ''planned'' or ''unplanned.'' This is not a distinction that member banks make in their internal and external reporting. In addition, regulatory reports require that unplanned overdrafts be reported as other loans, except when made to a depository institution, a foreign government or an official institution, in which case they are classified on the respective line.

7. Call Reports. Commenter suggestions related specifically to Call Reports included:

• Removing items that are unnecessary for supervision.

• Modifying reported items to conform to banks' internal reporting systems.

• Reducing penalties for noncompliance, which currently are excessive.

• Eliminating the requirement that three bank directors sign because Call Reports are electronically submitted.

• Reducing the level of detail in loans, securities, and deposits schedules.

• Reconsidering the requirement for disclosure of tax-exempt income in Income Statement memoranda items and re-pricing for complex bank organizations because of their limited usefulness.

• Reconsidering the relevance of requiring disclosure details on Schedule RC–O, as current level of FDIC assessments is zero.

• Providing real time access to the electronic Call Report filing system.

• Including on the Call Report all items necessary for supervision of peer group analysis.

• Not diminishing data reporting requirements for Call Reports.

8. FRY Reports. Commenter suggestions related specifically to the Board's FRY Reports included:

• FRY–8: Requiring a signature by one officer of the BHC, rather than signatures by an officer of each subsidiary bank.

• FRY–9C and –9LP: Eliminating or decreasing the frequency of filing, or decreasing the level of detail that is required (as in FRY–11).

D. International Operations

The majority of comments on the category of international operations regulations concerned the Board's Regulation K, as described below. A commenter also stated that OTS should relax its rules that prohibit thrifts from owning less than 100 percent of a foreign operating subsidiary.

Commenters questioned the limitations set forth in section 211.8(b) of Regulation K (12 CFR 211.8(b)) on direct investments by member banks. That section, which implements section 25 of the Federal Reserve Act (12 U.S.C. 601), authorizes only investments in (1) foreign banks, (2) domestic or foreign holding companies for foreign banks, and (3) foreign organizations formed for the some purpose of performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the member bank. In contrast, section 211.8(c) of Regulation K (12 CFR 211.8(c)), which implements section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) and section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13)), authorizes a greater range of [foreign] investments for bank holding companies and Edge and agreements corporations. The commenters asserted that no valid purpose is served by limiting member bank's foreign investments and suggested that member banks be permitted to make the full range of investments permitted to bank holding companies and Edge and agreement corporations.

Commenters also suggested that the regulators should permit member banks that are well capitalized and well managed and that have satisfactory CRA performance ratings and existing overseas operations to establish foreign branches using the same approval process that is available for domestic branches and nonbanking operations using the same process available for domestic nonbanking activities. Finally, one commenter requested that Edge corporations be permitted to accept domestic deposits from domestic customers, provided the majority of the depositor's deposits were Edge-permissible.

*II. **Federal Register** Notice Releases No. 2 and 3: Consumer Protection Lending-Related Rules and Other Consumer Protection Rules: Account/ Deposit Relationships and Miscellaneous Consumer Rules*

A. Flood Insurance

1. General. An overwhelming number of commenters stated that customers often do not understand why flood insurance is required and that the federal government—not the bank—imposes the requirement. Commenters said that the government should do a better job of educating consumers about the reasons and requirements of flood hazard insurance. Moreover, the Agencies should streamline and simplify flood insurance requirements to make them more understandable.

One commenter, representing a state bankers' association, stated that many of its members questioned why the banking industry had to police the borrowers' choices. Another commenter asked why the burden of the flood insurance regulation is on financial institutions rather than on the insurance industry.

One commenter asked whether the $5,000 value threshold for triggering flood insurance coverage could be increased. Another commenter urged more guidance on a specific period in which the notice should be given.

One commenter suggested that responsibility should be shifted away from financial institutions for the constant monitoring of whether borrowers continue to maintain flood insurance on the property. Although the commenter agreed that the loan should not be made without flood insurance, requiring the financial institution to constantly review whether flood insurance is up to date is a burdensome task. The bank must constantly review files and in many cases force-place insurance on the borrower. The institution should be able to rely on the NFIP (the insurer) to inform the financial institution that the borrower has dropped coverage rather than the institution having to monitor the files internally.

Another commenter expressed concern about 12 CFR 22.9, Notice of special flood hazards and availability of federal disaster relief assistance. The commenter noted that when a bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the bank must mail or deliver a written notice to the borrower and servicer in all cases. The commenter said that, if this same loan is renewed before the expiration of the initial flood zone determination, there should be no need to provide another notice to the consumer.

One commenter recommended that the Agencies provide more guidance on flood insurance. In particular, the commenter said that consumers should have easier access to flood zone information and the ability to determine if the information is current. The Agencies should streamline flood insurance requirements so the lender can easily identify the appropriate amount of coverage.

2. Simplification of Process. One commenter suggested a simplified disclosure concerning flood insurance that would read as follows: ''Is the property you want to purchase in a flood plain? YES or NO—If NO, go to next question; if YES see below. The estimate given by a local agent for flood insurance coverage on the property is $______ per year. You are required to provide proof of flood insurance coverage through an agent of your choosing by loan closing. If you want to know the identity of the agent that gave this estimate, please ask your lender.''

Another commenter asked for additional clarification or interpretation of the flood insurance regulations through a ''Q and A'' format. The commenter noted that, in the past year their external auditors informed them that they needed to compare the flood zone listed on the insurance policy to the zone listed on the determination to ensure they are the same. The external auditors directed the institution to request that the flood zone on the insurance policy be changed if it were not the same as the zone listed on the determination. The commenter contended that this requirement is not part of the regulation, but a new unwritten interpretation. That constitutes a burden on the financial institution. Because the institution cannot force an agent to make the change, the only thing the institution can do is document the file accordingly.

3. Opt-Outs. One commenter stated that flood insurance requirements should consider the value of the land even if the land is located in a flood zone. If the value of the land exceeds the amount of the loan, the borrower should be able to opt out of purchasing flood insurance. Also, currently if the loan is on vacant land in a flood zone, the institution must advise the customer. This commenter stated that this requirement should be eliminated since vacant land cannot be insured. Because of the regulators' strong stance on this requirement, institutions are at a competitive disadvantage with non-regulated mortgage companies. The commenter asserted that the financial institution's customers would also benefit from this requested change.

4. Loan Closings. A few commenters noted that when borrowers use a property located in a special flood hazard area as security on a loan, lenders must provide notice to the borrowers within a ''reasonable period of time'' prior to closing. This notice advises borrowers that the property is in a flood plain and requires flood insurance under the NFIP prior to closing the loan. The commenter further noted that, while a reasonable period of time is not expressly defined, the NFIP guidelines and agency examiners specify 10 days as a ''reasonable period.'' The timeframe protects the customer from losing their loan commitment while they shop for adequate, affordable insurance coverage. The reasonable period of time was not, however, intended to delay closing if the borrowers have purchased adequate coverage. Currently, there are examiners in the field instructing banks to wait a minimum of 5 to 10 days from the time they provide notice to the borrower until closing, even if the borrower has insurance coverage in place before the time period has expired. Clarification is needed in this area for both creditors and examiners.

One commenter suggested that the Agencies expand the Flood Determination form to include questions about collateral for the loan, such as, building only, contents only, or both, and if available at the time of the determination, questions about the loan amounts related to these items or the collateral value assigned to each. The service provider should then estimate the amount of insurance coverage required, based upon the current requirements, and place an estimate on the Flood Determination form.

5. Flood Insurance in Unincorporated Areas. One commenter noted the difficulty in complying with flood insurance requirements in unincorporated areas, since flood insurance is available only in incorporated areas. Flood hazard determinations are required though on all parcels of land which have a ''structure'' as defined in the regulation. That includes a grain bin or even an old barn that is beginning to fall over. Because flood insurance is unavailable for these unincorporated areas, it seems very wasteful of time, money and effort to require the flood hazard determination. Even if flood insurance were available however, it would seem wasteful to require a flood insurance determination on a dilapidated building which adds no economic value to the property. The commenter requested a review of the regulations and consideration of the issue of flood determinations on all structures, particularly in areas where flood insurance is unavailable. Another commenter noted that its bank is in a hill area where flood areas are clearly defined. The commenter noted that it has the responsibility to obtain flood insurance where needed, but that a detailed disclosure is still required even though the property is on top of a hill.

6. Special Flood Hazard Areas. Several commenters noted that notices are required for Special Flood Hazard Areas (SFHA). Lenders must provide this notice on loan originations as well as refinances. During a refinance, it is unduly burdensome for a lender to be required to give the notice within a reasonable time (ten days prior to closing) when the borrower is already aware that the property is located in a SFHA because they have an active flood policy in effect.

One commenter said that most appraisals disclose the flood status, and stated that a separate form is unnecessary given that the appraisal makes note of the information. Requiring a standard form is redundant and adds additional costs, either directly by the bank or indirectly through the appraisal.

7. Applicability to Certain Types of Property/Structures. In urging the regulators to simplify the flood insurance regulations, one commenter noted that the regulators said that the definition of ''permanently affixed'' meant that utilities were hooked to the mobile home. However, the commenter had interpreted ''permanently affixed'' as wired down or set on a foundation. As a result of the misunderstanding, the bank almost received a fine.

Another commenter urged modification of flood insurance to allow for exemptions for farm buildings like storage sheds, hay barns, and other nonresidential buildings.

Two commenters suggested that investors purchasing commercial property can determine themselves whether they need flood insurance.

Several commenters stated that they would also like to see the Agencies reconsider the requirement for insurance on a structure in a flood zone when the value of the land alone used as collateral supports the extension of credit. It should be the consumer's choice in that situation to purchase the insurance, just as it is when the consumer owns the collateral outright. Another commenter questioned why a borrower has to purchase flood insurance for a structure that is not considered as collateral for loan repayment. It is an additional burden to the financial institution to require the borrower to get the insurance, wait the 10 days after notifying the borrower of the requirement, and then close the transaction.

Another commenter further asked that the flood insurance regulation provide guidance on how to address buildings that the borrower intends to tear down. The commenter noted that it had had situations in which the borrower purchased property that was in a flood zone, and, within one week of the loan, the property was torn down. It is burdensome for the borrower to go through the time and expense of obtaining flood insurance for temporary situations such as this; however, the regulation provides no exceptions. The commenter acknowledged that, under the NFIP guidelines, insurance would not be required if the building had no value and this is reflected in the appraisal. In the borrower's example, however, the building had value. The commenter recommended an exception for buildings that will be torn down within an allotted timeframe from the closing date of the loan.

The commenter also requested that the regulation clarify what is acceptable coverage for condominiums when a Residential Condominium Building

Association Policy (RCBAP) is in place. The FEMA handbook ''Mandatory Purchase of Flood Insurance Guidelines'' outlines that a unit owner can acquire supplemental building coverage that will apply only to that part of a loss that exceeds 80 percent of replacement cost of the RCBAP. The commenter asked the Agencies to clarify that the financial institution need only to confirm that the RCBAP is for at least 80 percent replacement cost rather than 100 percent replacement cost.

8. Flood Insurance Maps. One commenter expressed concern that FEMA flood maps are often years out of date, and that the maps are not regularly adjusted. Moreover, in cases where the institution attempts to update the map, there are often long paperwork delays.

Another commenter noted that it is often difficult for bankers to assess whether a particular property is located in a flood hazard zone because flood maps are not easily accessible and are not always current. Even once a property has been identified as subject to flood insurance requirements, the regulations make it difficult to determine the proper amount, and customers do not understand the relationship between property value, loan amount and flood insurance level. Once flood insurance is in place, it can be difficult and costly to ensure that the coverage is kept current and at proper levels. As a result, many institutions rely on third-party vendors to assist in this process, but that adds costs to the loan. A commenter noted that the process for flood map amendment or revision is tedious for the consumer.

9. Force Placement. A few commenters noted that the financial institution is unable to force place a small amount of additional insurance on existing policy holders even if there is insufficient coverage on the property. Instead, the institution must work with the agent in trying to get the additional coverage placed, which the commenter contended cannot always be accomplished in a timely manner. The commenter suggested that the regulators amend the Mortgage Portfolio Protection Program rules to allow institutions to force place the additional coverage.

10. Appraisals. One commenter noted that its regulator says that if a current appraisal is not available, the bank must rely on the most recent hazard insurance policy to determine the value of the dwelling for purposes of calculating the required amount of flood insurance. This is not in the regulation. The commenter urged that the regulation provide guidance as to how old an appraisal can be before it is outdated. The regulation requires that the lender track flood insurance to ensure that proper coverage remains in place, therefore causing the commenter to review the flood insurance at least once a year at its renewal, and sometimes more often if the loan is modified or renewed. The commenter found that it is constantly recalculating the required amount of flood insurance because the hazard insurance increases every year due to automatic inflationary increases. The commenter complained that the institution continuously must require many of its customers to increase their flood insurance every year. This is an unanticipated expense to a borrower and can cause difficulty in the relationship, not to mention the administrative cost to the institution. The commenter proposed that the flood insurance should not have to be increased above the original required amount, unless the loan amount increases.

The commenter further noted that its regulator allows its institution to combine the building and contents coverage when determining the proper amount of flood insurance for a commercial property loan that is secured by both. However, if the loan is secured by the building only, the institution can refer to the building coverage only. The commenter said that such a policy is inconsistent, especially since the regulation provides guidance on how to determine building coverage; the building should be determined independently of the contents on a loan that contains both as collateral.

The commenter also stated that the initial notification prior to the loan closing is all that is reasonably needed and that regulators should eliminate the notification at the time of renewal, extension, or increase in the loan amount. The borrower is informed prior to closing that the property securing the loan is in a flood zone and flood insurance must be obtained. Because the institution must track this flood insurance, the borrower will be informed via a separate notice, should their insurance expire, that they have 45 days to obtain coverage or insurance will be force placed. As a commercial lender, the commenter cross-collateralizes loans to a business and renews the loans on an annual basis. Since these actions do not necessarily have the same maturity date, the borrower is continuously being sent notices that the property is in a flood zone. According to the commenter, borrowers think this is somewhat of a nuisance, and it is an administrative burden for financial institutions.

11. Miscellaneous. One commenter noted that, when a loan is new and secured by property in a flood zone, or property in a flood zone is added to an existing loan, there is no 30-day waiting period for flood insurance. However, the commenter found that this is not the case when the flood insurance is up for renewal and the premium is paid 30 days late. In cases such as this, the customer does have a 30-day grace period regardless of whether they have a loan. The commenter urged regulators to eliminate the 30-day grace period on delinquent policy renewals.

B. Truth in Lending Act/Regulation Z

Regulation Z was one of the regulations that received the most comments during the EGRPRA process. A general comment from many financial institution industry commenters was that consumers are frustrated and confused by the volume and complexity of documents involved in obtaining a loan (especially a mortgage loan), including the TILA disclosures as well as the RESPA disclosures. Industry commenters requested that the disclosures be written in a manner to facilitate consumer understanding. Many comments from both industry and consumer group commenters were also received on specific issues concerning Regulation Z.

1. Rescission. Industry commenters called the right of rescission one of the most burdensome requirements, and many suggested either eliminating the right to rescind or allowing consumers to waive the right more freely than under the current rule (which requires a bona fide personal financial emergency). Other industry suggestions included:

- Exempting regularly examined institutions from the rescission requirements (or allowing free consumer waivers for such institutions).
- Exempting transactions where the initial request for a loan comes from the consumer (rather than from a solicitation by the lender).
- Exempting refinancings (at least where no new money is extended).
- Exempting bridge loans.
- Exempting loans to ''sophisticated borrowers'' (for example, those with income over $200,000 or assets over $1,000,000), or freely allowing waiver in such cases.
- Dropping the requirement to delay disbursement of loan proceeds.
- Shortening the rescission deadline (such as, 11 a.m. on the next business day).

Industry commenters provided the following to support their suggestions:

- Consumers rarely exercise their right to rescind.

• Many consumers dislike having to wait three business days to receive the loan proceeds.

• Because consumers can review the early TILA disclosures given within three days after the loan application, consumers have ample opportunity to understand the transaction and therefore do not need the right to rescind later.

A few commenters said that a bank (even without the requirement) would work with a consumer who had a change of heart within several days after the mortgage closing. Arguments in support of dropping the delay-of-disbursement rule included that the rule is not statutory; that lenders, closing agents, consumers and others all incur extra effort and expense by not being able to finalize the transaction on the day of closing (including, for consumers, extra interest); and that if rescission should occur after disbursement has been made, the transaction can be unwound without great difficulty.

Consumer groups argued that the right of rescission is critical for consumers and must be maintained. They noted that the fact consumers rarely rescind suggests that the rule is not burdensome for lenders. Whether or not consumers rescind, they assert that the option to rescind provides incentive for lenders to comply with TILA. They also noted that consumers need time after closing to review the loan documents, including required regulatory disclosures, because loan terms often change at closing.

Consumer representatives believed that rules allowing consumers to waive the right of rescission should remain narrow and that the rule allowing waivers for bona fide personal financial emergencies works well. These commenters are concerned that such consumers may be unduly pressured to waive their right to rescind, or that they may too freely request a waiver because they are in need of the loan proceeds (especially in the case of low-income consumers). Consumer groups opposed the industry suggestion to exempt some refinancings because much abusive lending involves refinancings. However, one consumer group comment asserted that burden could be reduced by dropping the delay-of-disbursement rule.

2. Mortgage Loan Rules (generally). Industry commenters suggested that the RESPA disclosures, required under regulations issued by the Department of Housing and Urban Development, and the TILA disclosures should be consolidated into a single disclosure scheme, and generally, that one set of disclosures should apply to mortgage loan transactions, as opposed to multiple rules from various regulators. Commenters pointed to the large regulatory burden imposed because of the voluminous documents required at mortgage loan closings.

Consumer group commenters agreed with lenders that TILA and RESPA disclosures should be integrated. These commenters also suggested that lenders should provide consumers with accurate disclosures at the time of application, instead of estimates. In addition, consumer group commenters also stated that the method for calculating the finance charge for mortgage loans should include all costs.

3. Home Ownership Equity Protection Act Rules. With regard to the special rules under the Home Ownership and Equity Protection Act of 1994 (HOEPA), industry commenters asserted that the disclosures required under HOEPA are redundant and unnecessary, and that determining HOEPA coverage is difficult. They suggested using only the rate spread test, and not the fee test. Other suggestions included:

• Using the same rate spread test as for the Home Mortgage Disclosure Act (HMDA) disclosures.

• Making the HOEPA period for providing disclosures (three business days prior to consummation of the mortgage transaction) coincide with the TILA rescission period.

• Excluding credit life insurance premiums from the fee test for HOEPA coverage.

In support of the last suggestion, commenters stated that some consumers may want credit life insurance, yet lenders will not provide it so as to avoid HOEPA coverage. A commenter stated that the requirement for making HOEPA disclosures three business days before closing poses problems for both the bank and the consumer, because if the consumer decides at the last minute to change a term (such as, purchase credit life insurance and finance the premium), new disclosures and an additional three-day waiting period are required.

Consumer group commenters urged that because abusive lending continues to increase, regulators should keep the HOEPA rules in place.

4. Home Equity Line of Credit Rules. With regard to the special Regulation Z rules for home equity lines of credit (HELOCs), industry commenters suggested eliminating the requirement to provide the Board-prescribed home equity brochure, arguing that the brochure is unnecessary now that HELOCs are common and consumers are familiar with them. Another industry suggestion was that lenders be allowed a choice as to when to provide HELOC disclosures: Either at the time of receipt of the application or within three days of that date, for consistency with RESPA's good faith estimate and TILA's early disclosure requirements. The consumer representatives suggested that disclosures for HELOCs should be the same as disclosures for closed-end mortgage loans.

5. Adjustable-Rate Mortgage Disclosures. Consumer groups, commenting on the special application-stage disclosures for adjustable-rate mortgage (ARM) loans, stated that the disclosures should be loan-specific, as the technology now exists to provide such information. These commenters also advocated greater penalties for lenders that do not comply.

6. Finance Charge and Annual Percentage Rate Issues. Industry commenters asserted that it is difficult to determine which costs must be included or excluded in calculating the finance charge and annual percentage rate (APR), especially with regard to third-party fees, and that these calculations should be simplified. Commenters stated that consumers do not understand, are confused by, and are not interested in the APR, and that disclosure of the interest rate, loan term, monthly payment, and closing costs should be sufficient. One commenter suggested that the tolerances for finance charge should be increased to reflect inflation, and perhaps stated as a percentage of the loan balance. Another commenter suggested that APRs should reflect (1) the fact that mortgage loans are paid off after 7 to 10 years on average (rather than 30), and (2) the probability that, for a variable-rate loan, the initial low rate will rise over time.

7. Credit Card and Other Open-End Credit Issues. Industry commenters also addressed the rules for credit cards. Some institutions asserted that consumers can use rules for resolving billing errors to ''game the system,'' subjecting banks to fraud. These commenters argued that penalties should be imposed on consumers who make frivolous or fraudulent claims. Other industry commenters suggested that provisions of Regulation Z governing credit card disputes should be made consistent with the rules for debit cards under Regulation E and the Electronic Fund Transfer Act. They also noted that they need more time to investigate billing errors. Commenters also suggested that card issuers be allowed to issue additional credit cards for an existing account even when the consumer's existing credit card is not replaced or renewed.

Consumer representatives suggested that open-end credit account disclosures be revised to illustrate the effect of making only the minimum payments. They suggested that the disclosure tables provided with credit card solicitations and applications (the ''Schumer box'') also be provided with account-opening disclosures. They also suggested that consumers be permitted to provide oral notice of a billing error (rather than written notice, as under the current rule).

8. Advertising Rules. Industry commenters stated that the TILA rules regarding credit advertising are not clear, and that it is difficult to determine what may or must be included in an advertisement. Commenters also suggested providing exceptions for radio and television advertisements, similar to those under Regulation DD and the Truth in Savings Act.

9. Miscellaneous. Other industry comments included:

• Harmonizing the requirements for closed-end credit disclosures with those for open-end credit.

• Simplifying Regulation Z terminology.

• Providing greater flexibility in Regulation Z restitution requirements.

In addition, a few commenters opposed the Board's proposal for a single standard for ''clear and conspicuous'' for Regulations B, E, M, Z, and DD, arguing that the changes would cause problems and expenses and that the existing standards in each regulation are sufficient.

Other consumer group comments included:

• Keeping TILA/Regulation Z requirements intact.

• Adjusting the statutory damage caps for inflation (which would adjust the $1,000 cap to $5,350).

• Adjusting the jurisdictional cap ($25,000) for inflation (because many moderately priced automobile loans are now exempt).

• Maintaining the tolerance levels for error without any adjustments because technology permits lenders to make increasingly accurate calculations.

• Covering ''bounce protection programs'' under Regulation Z, or prohibit such programs altogether.

C. Home Mortgage Disclosure Act Regulation C

Regulation C was another subject of very heavy comment from financial institutions. Numerous commenters stated that collecting HMDA-mandated information was their most burdensome regulatory requirement. Commenters also added that compliance costs millions of dollars for paperwork with no meaningful results. Some commenters called for the outright repeal of HMDA or to have its requirements seriously modified. In addition, many commenters questioned the utility of the information collected.

Other general comments received from industry commenters included:

• Recent amendments to Regulation C have resulted in a large increase in burden and cost, without a cost-benefit analysis of the additional data requested by consumer activists.

• The original burden-reduction purpose of the HMDA review was lost, and Agencies should issue guidance to the media and public on the proper interpretation of HMDA data.

• Lending institutions were concerned that the HMDA data may be unfairly interpreted; for example, denials to minority applicants may appear high if a lender has an aggressive outreach program that generates many applications, or is in a rural area with few minorities.

Consumer group commenters argued that the recent Regulation C amendments significantly enhanced HMDA data collection and will provide critical information and, thus, should be given time to take effect. These commenters contended that insufficient time has passed to permit fair consideration of the benefits and burdens of the changes.

Many comments from both industry and consumer group commenters were also received on the following specific issues concerning Regulation C.

1. Institutions Subject to Regulation. A major issue for industry commenters was coverage of depository institutions under HMDA. Many suggested that the asset threshold for the exemption should be increased from its current level (at the time of the solicitation of comment) of $33 million, with some suggesting a coverage threshold of at least $250 million and others suggesting $500 million or $1 billion. One commenter stated that some bank holding companies maintain a number of bank charters in order to stay under the reporting threshold. Others suggested changing to a coverage test based on mortgage loan activity, such as exempting depository institutions with fewer than 100 loan originations annually. Another suggestion was to apply a tiered approach, where only larger institutions would be required to collect data on the rate spread, HOEPA status, and manufactured housing status. Some industry commenters stated that it was unfair to cover depository institutions in rural areas and that the percentage of the institution's loans in the metropolitan statistical area should determine coverage or a population threshold should be used.

Consumer groups opposed increasing the threshold for HMDA exemptions, and supported increased coverage, including covering lenders with assets under $33 million and lenders in rural areas. They asserted that many ''problem lenders'' are small lenders, and broader coverage would provide a better picture of the entire mortgage market. They also suggested lowering the thresholds to cover more non-depository lenders (specifically, by removing the 10 percent threshold, and lowering the $25 million threshold to $10 million) to address depository institutions' complaints about a level playing field. Consumer groups also advocated including all HMDA-reportable loans in calculating coverage under these thresholds.

2. Types of Loans Reported. Industry commenters asserted that the new definition of refinancing in Regulation C is overly broad, and would require reporting of small business and farm loan refinancings. Commenters believed that such loans should not be covered and would distort HMDA data. Also, commenters pointed to compliance difficulties because such loans are generally not handled in consumer lending departments (where most HMDA-reportable loans are handled). In addition, commenters argued that reporting of such loans would impose more burden on the Agencies, which will have to sort the data to make them usable. Commenters also asked for clarification on whether small business loans that will now be reportable under HMDA should still be reported under the Community Reinvestment Act (CRA). Some commenters suggested that business-purpose loans generally (including loans on multifamily and/or rental property), as well as withdrawn loan applications, should not be reportable. On the other hand, other industry commenters suggested that all residential or home-equity lending should be reported, arguing that determining the underlying loan purpose is difficult and that this change would reduce reporting errors.

3. Data Reported. Industry commenters argued that the volume of data required is excessive and burdensome, and that the value of the data has been overestimated and should be reconsidered. A few commenters suggested that unnecessary data fields be removed and that the focus be on fields that are truly meaningful or that regulators use market share to determine whether a lender is fulfilling its obligations. Industry commenters also

stated that certain information is difficult to determine, such as the definition of refinancing, rate spread (the difference between APR and a Treasury-bond-based index), HOEPA status (whether or not a loan is subject to HOEPA), and property location (especially in rural areas). Commenters asked for a consistent rule for determining loan amount for both HELOCs and closed-end home improvement loans. A few commenters argued that the definition of ''home improvement loan'' is too broad.

Many commenters stated that the rules for determining HOEPA status and rate spread are too complex. Suggestions included revising the HMDA trigger for reporting the rate spread to be consistent with the rate trigger used to determine coverage under HOEPA. Commenters also stated that reporting the APR instead of the rate spread would be simpler, more accurate, and more meaningful. Several commenters also suggested that MSAs needed to be readjusted or redefined for HMDA purposes.

In addition, some commenters suggested that the Board reconsider its recent changes to the categories for race and ethnicity data. Commenters stated that determining when to use multiple categories is difficult when reporting race and ethnicity data by visual observation (and noted that asking the questions may be offensive to applicants). They asserted that the government is perpetuating racial categorizations and suggested that, in telephone applications, lenders should be allowed to send the applicants a form requesting race and ethnicity, rather than asking for the information during the telephone conversation. Also, a commenter suggested that no penalty should apply if the lender inadvertently collects the monitoring data in a situation where such data are not required.

Consumer groups believed that institutions should report more data under HMDA, and that the new items should include pricing information on all loans, critical loan terms (such as the existence of prepayment penalties), and key underwriting variables (such as, credit scores, loan-to-value, debt-to-income ratios). They believed institutions should report property location, even for rural areas and metropolitan areas where the institution does not have offices. They also asserted that institutions should report monitoring information for purchased loans.

D. Equal Credit Opportunity Act/ Regulation B and Fair Housing Act

Regulation B also received hundreds of comments from industry commenters. General comments from industry commenters included:

- The Agencies should provide more guidance on fair lending because settlements in fair lending cases are too vague to provide guidance.
- The Agencies should work with lenders to provide them with more flexibility and choice in complying with Regulation B.
- The regulation should not apply to business credit.

Consumer representatives said that Regulation B should not be streamlined or weakened.

1. Evidence of Intent to Apply Jointly. Many industry comments on Regulation B focused on provisions, adopted by the Board in a recent regulatory review, regarding joint applications. Financial institutions contended that the new rules regarding how creditors must evidence the intent of the parties to apply jointly are problematic, particularly for business and agricultural loans, and for telephone and Internet applications. A commenter stated that the new rules almost require all parties and their spouses to come in to the bank's office to complete applications. The commenters also noted issues with respect to the proper use of Fannie Mae and Freddie Mac forms (including some conflicting guidance from different agencies on whether use of these forms would be sufficient to show intent to apply jointly). Some commenters argued that both borrowers' signatures on the note should be sufficient evidence of the party's intent to apply jointly, or that completion of the application form as a joint application should be sufficient evidence of such intent. In addition, some suggested that in business and farm lending where there is an ongoing relationship between the borrower and the lender, providing evidence of intent to apply jointly at the outset of the relationship should suffice.

2. Data on Race and Ethnicity. In regard to Regulation B, some commenters suggested eliminating the collection of monitoring information on the race, ethnicity, and gender of applicants for loans to purchase or refinance a principal dwelling. Commenters stated that, if consumers do not wish to provide the information, the lender should not have to guess race and ethnicity. Commenters also argued that sufficient information is collected under HMDA and therefore should not be separately required under Regulation B. One commenter contended that the Regulation B data collection requirement poses problems for banks not subject to HMDA, because they may use HMDA loan application forms, yet the data collection rules under Regulation B differ from those under HMDA. Other commenters suggested that this information should be collected on all loans (or on all real-estate secured loans) or on none.

Consumer representatives also addressed the collection of monitoring information. They urged that lenders be required, or allowed voluntarily, to collect and report information on the demographics of small business borrowers, asserting that lending to businesses in low- to moderate-income areas has stagnated.

3. Interaction with the PATRIOT Act. Commenters also addressed the interaction between Regulation B and the PATRIOT Act, such as, the Regulation B prohibition on obtaining information on gender and race or national origin and the PATRIOT Act requirement to maintain sufficient information to identify a customer. Commenters asked for more guidance on whether or not a copy of the borrower's photo identification may be kept in a loan file, and suggested that the prohibition against retaining copies of drivers' licenses in loan documentation should be dropped.

4. Adverse Action Notices. Many commenters criticized the adverse action notice requirements of Regulation B, and stated that consumers do not like receiving adverse action notices. Commenters argued that lenders need more flexibility in dealing with loan applicants (such as, a bank may wish to offer a customer an alternative to the loan originally applied for, but this may trigger an adverse action notice requirement). A few commenters suggested that the Agencies redefine the Regulation B definition of ''application.'' A complaint in this area was that it is difficult to know when an application has been made for purposes of Regulation B, because the distinction between an inquiry and an application is not clearly defined. Commenters recommended that an easily understood rule should be developed on when an adverse action notice is required (such as, it may be difficult to determine whether an application is incomplete, or has been withdrawn). Another comment was that the number of reasons to include on the adverse action notice is a problem. One commenter stated that the Agencies should better coordinate the adverse action notice requirements of Regulation B with those of the Fair Credit Reporting Act.

5. Miscellaneous. Other suggested changes concerning ECOA or Regulation B included:

- Repealing the ECOA and Fair Housing Act logo and poster display requirements.
- Allowing consideration for ownership of a cell phone when determining creditworthiness.
- Amending the regulation to clarify whether the institution must provide the consumer with information from an automatic underwriting when used instead of an appraisal report.
- Abolishing the requirement to provide a loan applicant with a notice of the right to receive an appraisal as unnecessary.
- Relaxing the rules for special purpose credit programs.
- Easing Regulation B restrictions to allow the offering of special accounts for seniors.
- Replacing ECOA, Fair Housing Act, and other fair lending legislation with a single antidiscrimination act.

E. Consumer Leasing Act/Regulation M

A few industry commenters addressed Regulation M issues. Comments included suggestions that the Agencies update jurisdictional limits and statutory damages, and amend Regulation M to eliminate new disclosures for month-to-month renewals of leases, and instead require disclosures only when a lease is extended at least 12 months beyond its original term. This would avoid covering, for example, a lease extension while the consumer and lessor work out terms for a buyout of the vehicle.

Consumer group commenters did not comment on Regulation M issues.

F. Unfair or Deceptive Acts or Practices (UDAP)/Credit Practices Rule/ Regulation AA and OTS UDAP Regulation [63]

Industry commenters offered a few suggestions regarding Regulation AA, including:

- Non-purchase-money, non-possessory security interests in household goods should be allowed in some cases.
- First-lien mortgages should be exempt from the cosigner notice requirements (because such loans involve low risk, and the cosigners in these transactions are usually aware of the terms and thus do not need notice).

Regarding UDAP issues more generally, industry commenters stated that, if supervisory agencies pursue enforcement actions in this area, the Agencies should release information about the actions to provide guidance to the industry.

Consumer groups commented generally that current UDAP protections should not be weakened. They also argued that current agency UDAP guidance overemphasizes disclosures rather than substantive protections against abuse. Consumer group commenters suggested that the Agencies address the following practices in the UDAP rules:

- Equity stripping (such as, exorbitant fees, loan flipping, packing and financing of ancillary products).
- Practices that make borrowers vulnerable to foreclosure (such as subprime prepayment penalties, balloon payments and negative amortization in subprime loans, and mandatory arbitration clauses).
- Practices that exploit vulnerable populations (such as, steering borrowers toward subprime products targeting particular ethnic groups, the elderly, and/or low-to-moderate income persons and neighborhoods).

Commenters also suggested that the Agencies address payday lending and bounce protection under UDAP rules.

Consumer comments on Regulation AA specifically included the suggestion that the Board adopt the Federal Trade Commission's ''Holder Rule'' to make it applicable to banks. (The Holder Rule requires that a consumer credit sale contract contain language prominently stating that any holder of the contract is subject to any claims and defenses that the consumer could assert against the seller of the goods or services that are the subject of the contract.)

G. Interagency Privacy Rule and Information Security Guidelines

The majority of these comment letters addressed the interagency rules, which are substantively identical, regarding the privacy of customer information (12 CFR 40, 216, 332, and 573) (Privacy Rule). Many of the letters were substantively similar form letters and some letters were submitted by multiple individuals associated with a single depository institution. A few of the letters also addressed the interagency guidelines regarding safeguarding of customer information (12 CFR 30, Appendix B; 208, Appendix D–2; 364, Appendix B; 570, Appendix B; and 225, Appendix F) (501(b) Guidelines), which also are substantively identical. The Privacy Rule and 501(b) Guidelines implement Title V of the GLBA.

The most frequent comment, by far, on the Privacy Rule was that the annual notice requirement was unnecessary because it was confusing for consumers and/or unduly burdensome for depository institutions. Many commenters suggested alternative follow-up notice requirements that were more limited in scope than the present rule. The most frequently suggested alternative was that no follow-up notice should be required unless and until a depository institution's policy changes. Another suggestion was that the Agencies require annual notices only for those depository institutions that share in a manner that triggers the consumer's right to opt out.

Many commenters expressed general concern that the privacy notices are too detailed and legalistic, which impedes consumers' ability to understand such notices. Some of these commenters suggested specific alternative approaches. Some commenters also suggested that the banking agencies should develop a model form that depository institutions could use as a compliance safe harbor, although commenters differed on whether use of such a form should be required or voluntary.

Some commenters opined that there should be a uniform national standard for privacy notices because the federal rule, when combined with additional state requirements that vary from state to state, created compliance difficulties for depository institutions.

Commenters opined generally that the 501(b) Guidelines were unnecessary and/or overly burdensome. Some of these commenters thought that the flexibility of the Guidelines made it difficult for depository institutions to determine what would constitute compliance and suggested that the Agencies provide clarification in this regard. In addition, some commenters expressed concern that different examiners held depository institutions to different compliance standards and suggested that the Agencies promote more consistent compliance examinations.

H. Section 109 of the Interstate Banking and Branching Efficiency Act of 1994, Prohibition Against Deposit Production Offices

Only two comments were received on the regulations that prohibit a bank from establishing or acquiring branches outside of its home state primarily for the purpose of deposit production pursuant to section 109. One industry trade association cited the statute's requirement that the Agencies not impose any additional paperwork collection or regulatory burden when enforcing the provision and stated that the Agencies have complied with the statute's intent. Another industry trade

[63] No comments were received on the OTS UDAP regulation.

association supported the regulatory requirements and did not recommend any regulatory changes but recommended a statutory change that would increase the threshold for measuring compliance. Instead of a covered bank currently needing to have a loan-to-deposit ratio in states into which it branches that equals one-half (50 percent) of the state bank's overall loan-to-deposit ratio, the industry trade association wants a covered bank to have a ratio that equals 80 percent of the state ratio.

I. Electronic Fund Transfer Act/ Regulation E

1. Products Subject to Regulation. An industry commenter suggested that, among stored value products, Regulation E should apply only to products that have the characteristics of traditional deposit accounts, and not to those that do not represent account ownership at a depository institution but that instead are designed to be treated like cash. In contrast, consumer groups suggested applying Regulation E to payroll cards (arguing that payroll cards may be forced on employees, yet lack protections), and to other stored value cards. Consumer group commenters also stated that consumers are confused by differences in protection among debit cards, payroll cards, and other stored-value cards. One commenter stated that the Electronic Funds Transfer Act (EFTA) should be revised to ensure that all consumer payment mechanisms have the maximum level of consumer protections.

2. Error Resolution Rules. A number of industry commenters addressed the error resolution rules of Regulation E. Commenters suggested that the Agencies make Regulation E rules consistent with rules of the National Automated Clearing House Association (NACHA). For example, under the NACHA rules the consumer has 60 days from the date of posting the transaction, while under Regulation E the consumer has 60 days after they have been provided with a periodic statement. Other suggestions were that the time for a consumer to give notice of error be reduced from 60 days to 30 days, and that the time for the bank to resolve the error (or provisionally recredit the consumer's account) be increased from 10 business days to 20 business days. Commenters also suggested that the difference between the time for institutions to resolve errors under Regulation E, and the time for merchants to respond to the institution, be reduced (to lessen the possibility of the merchant responding after the institution has made a provision credit final). In addition, commenters asserted that the bank should not be required to act unless the consumer puts the error claim in writing.

A bank stated that its cost per dispute is approximately $32, and that the mandated time periods for error resolution, notice requirements, and research requirements are very burdensome. Another commenter called the error resolution provisions the most misunderstood in the regulation, and asked for additional clarification or examples. Another comment was that the error resolution procedures are confusing, since they vary depending upon whether the transaction in question occurred in a new account. Further, according to the comment, the Regulation E definition of ''new account'' does not match the definition of the term in Regulation CC; the definitions should be made consistent.

Another commenter asserted that the bank is prohibited from collecting any dispute fee from the consumer, even if it is found after investigation that no error occurred.

3. Consumer Liability for Unauthorized Transactions. Industry commenters criticized the Regulation E limits on consumer liability for unauthorized electronic fund transfers and urged the Agencies to increase the limits and shorten the timeframes for consumers to report loss or theft. It was argued that the existing limits were appropriate when electronic transfers were a new technology, but unfair today when consumers are familiar with the need to protect their PIN, and where 24/7 access to account information is available to allow consumers to detect suspicious activity.

Thus, commenters suggested that the rules on consumer liability should incorporate a negligence standard, such that if the consumer's negligence leads to unauthorized transactions, the consumer's liability increases. Commenters urged that in cases in which the consumer writes the PIN on the debit card (or keeps the PIN and card in the same location), or if the financial institution can otherwise substantiate consumer negligence, the consumer's liability should be increased to $500. Another commenter recommended that the consumer's basic level of liability, currently $50, be increased to $250, and that the consumer be required to report the loss within five business days from the bank's receipt of the first unauthorized transaction. A commenter suggested adopting a comparative negligence standard consistent with check law under the Uniform Commercial Code. Another suggestion was that the limits on consumer liability for unauthorized electronic fund transfers be adjusted annually for inflation. Regarding signature-based debit card transactions, it was suggested that merchants that accept such transactions without verifying the consumer's signature (or even in all cases, whether or not the merchant verifies the signature) should be held accountable.

A commenter suggested that the same rules should apply to credit card, ATM, and debit card transactions, because it is confusing to consumers as well as bank employees when different sets of rules apply depending upon the type of transaction.

Consumer group commenters suggested that institutions should not be permitted to place the burden of proof on a consumer regarding a claim of an unauthorized transfer; rather, the institution should reimburse the consumer unless the institution can prove that the transfer was authorized.

4. Automated Teller Machine Fee Disclosures. An industry commenter stated that the requirement to provide notice of an automated teller machine (ATM) fee both by posting the notice at the ATM, and by providing the notice on the ATM screen (or on a paper notice issued by the ATM), involved useless duplication.

5. Change in Terms Notices. Many commenters suggested that the requirement to give notice of a change in account terms or conditions should be changed from 21 days in advance of the change to 30 days in advance, to make the notification timeframe consistent with Regulation DD and simplify compliance. An alternative suggested by one commenter was to conform the Regulation DD time period to that under Regulation E.

6. Account-Opening Disclosures. A commenter stated that providing disclosures simply because the account could have an electronic transfer is expensive when many accounts do not have such activity.

7. Periodic Statements. Commenters suggested that, in the case of consumers who have online or telephone access to monitor their accounts and transactions daily, the requirement for a monthly or quarterly periodic account statement is unnecessary. A commenter contended that the requirement to provide periodic statements quarterly for accounts with electronic access but no activity is unduly burdensome, and suggested that the Agencies amend the rule to allow for semiannual or annual statements in such cases.

8. Disclosures (generally). A commenter stated that required EFT

disclosures are too lengthy and are likely not read by consumers.

9. Issuance of Debit Cards. A commenter generally supported the Board's current proposed amendment to the Regulation E staff commentary that would clarify that institutions may issue multiple debit cards as a renewal or substitute for an existing single card if the card issuer complies with certain validation requirements set forth in the regulation.

10. Telephone Authorization for Recurring Debits. A commenter generally supported the Board's proposed amendment to the Regulation E staff commentary that would withdraw a comment that states that a tape-recorded telephone conversation does not constitute written authorization for purposes of the requirement that preauthorized recurring electronic debits to a consumer's account be authorized by the consumer only in writing. However, the commenter recommended that the Board specifically confirm that such a tape-recorded authorization would satisfy the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (and thereby comply with Regulation E), as opposed to merely withdrawing the comment and not addressing the interpretation of the E-Sign Act.

11. Notice of Variable-Amount Recurring Debits. A commenter generally supported the Board's proposed amendment to the Regulation E staff commentary that would provide that a financial institution need not give a consumer the option of receiving an advance notice of the amount and scheduled date of a variable-amount preauthorized recurring electronic transfer from the consumer's account to another account held by the consumer, even if the other account is held at another financial institution.

J. Truth in Savings Act /Regulation DD

A general industry comment was that compliance with Regulation DD can be time-consuming and costly, and therefore many banks have eliminated various accounts and combined statements, doing a disservice to consumers. It was also stated that when Regulation DD was promulgated, few consumers had complained about inability to comparison shop using simple interest rate information.

1. ''Level Playing Field.'' A few commenters suggested that credit unions should be required to provide disclosures similar to those of Regulation DD in order to enable consumers to make an informed decision.

2. Disclosures (generally). A commenter stated that required Truth in Savings Act (TISA) disclosures are too lengthy and are likely not read by consumers. Another commenter suggested that the disclosures be simplified, shortened, and written in a ''plain English'' format. Another commenter recommended that examiners cite only substantive violations; the commenter stated that using the term ''Personal Money Market'' in the initial disclosure and the term ''Money Market'' in the periodic statement was cited as a violation but should not have been. Many commenters asserted that their customers pay little attention to the TISA disclosures. These commenters argued that there is a cost for developing the programs and procedures to produce the disclosures, but if consumers are not paying attention to the disclosures, then the regulatory requirement is needless. The commenters recommended that the banking Agencies conduct a study involving all interested parties, including banks, consumers, and software providers, to determine whether the TISA disclosures are truly serving their purpose and to streamline, simplify, and improve the effectiveness of the disclosures.

A commenter suggested that the disclosure requirements be the same for both paper and electronic forms, to simplify the regulatory framework and ease compliance burdens.

A consumer group commented that the regulation should require TISA disclosures to be made available on financial institutions' Web sites.

3. Change in Terms Notices. Commenters suggested that the requirement to provide a notice of change in terms 30 days in advance of the effective date of the change be revised to provide for a shorter period of advance notice. It was noted that, when interest rates change, a shorter period better reflects the changing market.

4. Renewals of Certificates of Deposit. A few commenters addressed the requirement to provide disclosures before renewals of certificates of deposit (CDs). One commenter noted that TISA disclosures are provided at the time of initial purchase of the CD and argued that, if the CD will be renewed on the same terms, no further disclosure should be required. The comments also noted that if the terms will change at renewal, disclosure of the changes would already have been provided under the change-in-terms notice requirements. Another commenter suggested simplifying the notices by eliminating the different requirements for varying maturities of automatically renewable CDs, as well as between automatically renewable CDs and not automatically renewable CDs (calling for one standard notice that would include the date the existing account matures and a statement that the consumer should contact the institution to obtain further information).

5. Advertising Requirements. A commenter requested clarification that electronic billboards are included in the exempt category of ''outdoor media'' and that voice response units are included in the exempt category of ''telephone response machines.'' The commenter stated that, during examinations, the media in question are not consistently treated as exempt from the advertising requirements. Another commenter suggested that the Agencies simplify the advertising rules, especially for banks that are subject to the Federal Trade Commission Act that prohibits unfair and deceptive practices in advertising.

6. ''Bounce Protection'' Amendments. A few commenters addressed the proposed amendments to Regulation DD regarding bounce protection programs. These commenters expressed opposition to the proposals, in particular those relating to disclosing aggregated overdraft fees on periodic statements and to advertising specific fees and terms of overdraft services. One of these commenters stated that the aggregated fees proposal would be costly to implement and an unnecessary disclosure for consumers; and that the advertising proposal would be difficult to comply with because there are numerous and ever-changing reasons why an institution may refuse to pay an overdraft (which would have to be disclosed by institutions promoting overdraft services). Another of these commenters recommended that, if the Board adopts the proposals, the Board should allow the industry adequate time to make system and personnel changes necessary to comply. Another commenter stated that the costs and burdens of implementing the new rules, if adopted, would lead many community banks to discontinue offering this product, doing a disservice to consumers.

7. Record Retention Requirements. A commenter suggested that institutions that are examined more frequently than once every two years be required to retain records of compliance for one examination cycle (rather than for two years, as currently required).

K. Consumer Protection in Sales of Insurance

A number of industry commenters addressed the interagency regulations on consumer protection in insurance sales, implementing section 47 of the Federal Deposit Insurance Act enacted as part of the GLBA. Commenters raised issues related to the disclosure requirements of the regulations.

Consumer group commenters did not comment on the regulations on consumer protection in insurance sales.

1. Types of Insurance and Annuities Covered by Disclosure Requirements. One of the suggestions most frequently expressed by commenters was that the Agencies should exclude from disclosure insurance products that do not involve investment features or investment risk from the disclosure that there is investment risk associated with the product, including possible loss of value. For example, commenters argued that fixed-rate annuities guarantee the return to the policyholder, and that the Agencies should exclude such annuities from the investment risk disclosure.

Commenters also focused on the disclosure that an insurance product is not a deposit and is not insured by the FDIC or any other government agency. They contended that the disclosure requirement should apply only to insurance products that are similar to a deposit product because of the fact that consumers might confuse such insurance products with an FDIC-insured deposit. They argued that the disclosure requirement should not apply to types of insurance such as credit life, property and casualty, crop, flood, and term life insurance, where, because such insurance products are not similar to a deposit product, there is no likelihood of confusion. Commenters suggested that making the disclosure for insurance products such as credit life insurance in fact confuses consumers (rather than alleviates confusion), and therefore requires institution personnel to spend time explaining the disclosure to consumers.

2. Duplicative Disclosure Requirements. Commenters noted that credit life insurance is subject to a disclosure requirement under section 47 of the FDIA—the fact that the institution may not condition an extension of credit upon the purchase of an insurance product or annuity from the institution—and also to a similar disclosure provision under the Truth in Lending Act. The former disclosure is made at application and the latter at loan closing. Commenters suggested that a single disclosure at loan closing should be sufficient. Commenters also stated that some state laws require similar disclosures. One commenter asserted that, therefore, a consumer in such a state must sign four times to purchase credit insurance (twice for federal disclosures, once for the state disclosure, and once on the insurance company's form). Commenters argued that consumers are confused by the multiplicity of disclosures that have no real meaning for the average consumer.

3. Procedures for Providing Disclosures. Commenters addressed the fact that the regulations require the disclosures both orally and in writing, and suggested that a single method should suffice (for example, written disclosures should be sufficient, except for telephone sales, in which case oral disclosures should be sufficient). Commenters also noted the requirement to obtain the consumer's written acknowledgment that they received disclosures arguing it is burdensome and unnecessary. One commenter also suggested that an oral acknowledgment should suffice in the case of a telephone sale (the regulations, in that circumstance, require that the institution both obtain an oral acknowledgment on the telephone, and make reasonable efforts to obtain a written acknowledgment).

L. Advertisement of Membership (Deposit Insurance)—12 CFR Part 328

Several comments were received. Two commenters had no recommendations for changes. One of these commenters, an industry trade association, noted it had received few questions or complaints about part 328 since it was revised in 1989. The second commenter, also an industry trade association, said banks generally do not find the regulation burdensome as long as it is reasonably interpreted and not strictly construed—such as, allowing banks to take deposits at a customer service desk or a branch manager's desk without having to display the official bank sign.

Some commenters recommended changing part 328. One commenter favored simplifying the exceptions to the official advertising statement requirement to say that it applies only when advertising deposits. Another commenter recommended eliminating the exception to official advertising statement requirement for radio and television ads that do not exceed 30 seconds. Several commenters from an industry trade association questioned the need for the official sign, and one commenter of that industry trade association thought requiring the official advertising statement on bank merchandise was excessive. One commenter thought that not every teller window required an official sign, saying that posting the official sign on the front door or in the lobby should be sufficient. Finally, one commenter asked for clarification when the official advertising statement is required, saying that the FDIC should not require the official advertising statement on promotional items.

M. Deposit Insurance Coverage—12 CFR Part 330

One commenter suggested simplifying the rules for the various types of accounts, particularly when combining accounts to maximize coverage limits. Commenters noted the difficulty in explaining the rules to customers. A number of commenters mentioned that the EDIE educational program was very helpful and some commenters asked that it be sent to every financial institution and branch location to assist employees in responding to customer questions. Most commenters also suggested raising, or not lowering, the deposit insurance limits. Some commenters who favored raising the limit suggested the limits be indexed for inflation. In addition, commenters suggested the following:

- Merge the BIF and SAIF.
- Assess growth related premiums on rapidly growing institutions, but not small *de novo* institutions.
- Give FDIC the flexibility to manage the insurance fund and spread recapitalization over a reasonable period.

Commenters also suggested that a rebate system be established, that the need to ''structure'' deposits be eliminated, and that assessment forms are unnecessary.

N. Deposit Insurance Regulations

Many other commenters supported legislation that would merge the BIF and SAIF fund and allow every institution that benefits from deposit insurance to pay something when they enter the system. The commenters suggested that the Agencies factor into the risk-based assessment other factors such as, number of interstate locations, types of products offered, and exam ratings. Another commenter suggested that new entities that open with FDIC coverage, such as American Express, but have not paid into the fund, should pay a substantial fee.

One commenter felt the purpose of the fees, to prevent dilution of the SAIF and to ensure payment of FICO bonds, no longer exists so the fees are moot.

One commenter stated that deposit insurance coverage rules need simplifying and streamlining. The same commenter additionally recommended that FDIC distribute information to every branch office of every bank and otherwise disseminate tools more broadly so that consumers understand how to expand coverage.

O. Notification of Changes of Insured Status—12 CFR Part 307

The one commenter, a trade association, stated that no bank or savings association has ever raised a regulatory burden concern about the requirements and therefore, the commenter had no recommendations for change.

P. OTS Advertising Regulation and Tying Restriction Exception

There were no comments on either OTS regulation. (12 CFR 563.27 and 12 CFR 563.33)

III. Federal Register Release No. 4—Anti-Money Laundering, Safety and Soundness and Securities Regulations

A. Anti-Money Laundering

1. Bank Secrecy Act and Money Laundering. The Agencies received over 125 comments discussing various issues pertaining to compliance with the BSA and other AML legal requirements. In addition to the written comments received, issues associated with BSA compliance ranked among the most burdensome requirements identified by bankers during the nationwide outreach meetings that the federal banking agencies conducted during the EGRPRA process. Whether in written comments submitted in response to the **Federal Register** notice, or in oral comments delivered at the outreach meetings, bankers expressed deep concern over the costs in time, money, and staffing associated with complying with the BSA and, particularly, whether such efforts are useful and cost effective.

a. Currency Transaction Report Thresholds. In comments submitted to the **Federal Register**, as well as in the various Bankers Outreach Meetings, commenters were unanimous in supporting changes to the currency transaction report (CTR) requirements. With the exception of one commenter, all were unanimous that the current threshold of $10,000 for filing CTRs needs to be increased. The suggested numbers for a new threshold ranged from $15,000 to $50,000, with most commenters urging a new threshold of $20,000 or $25,000. The reasons given for the need to increase the threshold varied among the commenters. A number of commenters noted that the $10,000 threshold had been established over three decades ago and that there was a need to adjust the threshold for inflation. A majority of the commenters discussed how burdensome the CTR requirements were, both because of the low reporting threshold and because of the belief that law enforcement did little, if anything, with the CTRs that banks file. One commenter noted that the low threshold ''clutters the system'' with CTRs that do not have enough value to justify the cost of filing, data entry, storage and retrieval. Raising the threshold, some commenters believed, would be more efficient for both law enforcement and the banks. A couple of commenters suggested reviewing/adjusting thresholds annually to allow for inflation, and to enable government to make changes based on resources and law enforcement needs.

One commenter suggested that lowering the CTR threshold to $5,000 would reduce duplicative paperwork burden. This commenter contended that lowering the threshold would avoid double filing of paperwork, because banks must file CTRs on aggregated transactions that meet the threshold of $10,000 and SARs on the individual deposits making up the total. The commenter asserted that most SARs are required to be filed because a customer has structured deposits that trigger the $10,000 threshold and, if the threshold is lowered to $5,000, the commenter suggested that only a CTR would be required for these same transactions. Another commenter took a different view and noted that excessive SARs for ''structured'' transactions are being required because the current $10,000 threshold is too low. This commenter suggested raising the CTR threshold to $25,000.

One commenter noted that exemptions from CTR reporting are too complicated and it is easier for a bank to file a CTR than undertake the determination that a customer qualifies for an exemption. The commenter recommended that the federal banking agencies tell FinCEN that CTR exemption rules need to be amended to allow exemption designations for all non-listed businesses other than businesses designated by FinCEN as increased risk, without regard to transaction history, and exemptions should be done through a one-time filing.

Another commenter proposed eliminating the one-year CTR exemption waiting period. This commenter stated that since the PATRIOT Act already requires upfront information to enable institutions to identify customers, it is duplicative and burdensome to not allow CTR exemptions until a year has passed. On a related note, another commenter said that it would be better for there to be no CTR reporting until a customer was deemed suspicious by the depository institution, or until the government told the institution to begin such reporting. Yet, another commenter suggested eliminating the annual recertification requirement for exempt customers. Another commenter stated that it had not made use of a so-called Phase II exemption due to the time and personnel needed to monitor and document activity over a 12-month period to ensure that customers qualify for the exemption. This commenter said that the only requirement should be to eliminate the exemption when a customer's attributes no longer qualify for the exemption. Three commenters said that the biennial filing of exempt accounts is unnecessary because banks review the exemptions annually. Another commenter proposed that the period for establishing a relationship for purposes of an exemption be reduced from 12 months to 3 to 6 months.

One commenter suggested replacing daily CTRs with monthly cash transaction reporting. The commenter suggested that a report for any customer with cash transactions of over $50,000 would help government focus on the riskiest customers. Another suggested statutory changes to eliminate the CTR form. The commenter suggested that the form is difficult to fill out and that it would be easier for banks to give monthly reports of all deposit accounts that had aggregate cash in/cash out of $10,000 for the month containing account name, account number, taxpayer ID number, account address, and total cash in and cash out. This approach, said the commenter, would eliminate ''thousands of hours'' spent preparing individual CTRs for everyday deposits/withdrawals. It would also eliminate the need to file SARs for amounts just under $10,000.

One commenter noted that the exemption system for CTRs does not work well for community banks, because it is not cost effective for small institutions that do not file a lot of CTRs and fear regulatory action if the exemption is used incorrectly. The commenter recommended that the agencies work with FinCEN to allow institutions to more quickly exempt business customers. Another commenter urged easing exemption requirements for existing customers as a way of reducing burden on banks.

b. Suspicious Activity Reports. SARs were the subject of much of the same criticism that CTRs received—commenters suggested they are burdensome, are not followed up on, and are not cost effective. Many commenters stressed the need for clearer, more consistent SAR guidance. One commenter urged the banking agencies to create a consistent policy on SARs together with FinCEN and DOJ. Another commenter suggested that further guidance is needed. The commenter asked how far back does one need to research the account once suspicious activity is found; the commenter suggested 1 to 3 months. Another commenter said ''we need an FBI agent on staff to interpret SAR rules.'' Several commenters noted how time consuming it could be for a financial institution to file a SAR. One commenter noted that the FBI investigated only one SAR filed by the bank and then did not pursue it, adding ''it seems there needs to be a loss to the bank of 100K before the FBI will investigate.''

Another commenter noted (see above) that the current $10,000 threshold for CTRs leads to SARs being filed for structured transactions just under that amount; these SARs constitute, according to the commenter, almost 50 percent of all the SARs filed and drive up the costs of the system that stores/processes all the data.

Many commenters noted that the increased volume of SARs is degrading their effectiveness. Commenters suggested that agencies should work with FinCEN to provide detailed guidance on when SARs should be filed and what documentation banks need to maintain. One commenter noted that banks currently need to ''over comply'' with SARs requirements and that there is no consistency from agency to agency. Several commenters contended that little or nothing is done with SARs once they are submitted.

Several commenters suggested raising the threshold for filing SARs, with one commenter stating that the threshold amount should be raised to $100,000. Another commenter suggested that the threshold be tied to inflation. In the case of SARs, the threshold should be $10,000 when a suspect is known and $50,000 when no suspect has been identified. Another commenter suggested that the threshold for ''money laundering SARs'' be raised from $5,000 to a higher amount.

Many commenters said that unclear requirements from the agencies regarding SARs have led them to file so-called ''defensive SARs.'' One commenter noted that banks do this to protect themselves against examiner criticism. Moreover, a commenter noted SAR filings make CTR filings redundant.

One commenter noted that it does not make sense that a person identified as a money launderer can move from bank to bank. The commenter recommended developing a ''watch list'' of such individuals.

One commenter said that clearer guidance is needed on when filing is necessary. Specifically, the commenter suggested eliminating the requirement that a bank must file a SAR every 90 days after the first SAR is filed. Another commenter noted that the beginning of the 30-day period for SAR reporting is unclear and that banks should be given ample time to examine the activity or maintain a process for the investigation of facts; the 30-day period should begin with a bank determination that suspicious activity has occurred and that a SAR is needed.

c. Customer Identification Program. Many commenters noted the burden that the customer identification program (CIP) currently imposes on banks, and the inconvenience that it creates for long-time customers. One commenter noted that ''in our town, we gawk when strangers come in.'' This commenter suggested a BSA exemption for banks under $100 million in assets in communities with a population of less than 25,000.

Another commenter suggested that the current definition of ''established customer'' be amended to make clear that it is a customer from whom the bank has already obtained the information required by 31 CFR 103.121(b)(2)(i). In addition, this commenter suggested amending existing 31 CFR 103.29 to replace references to ''deposit account holder'' and ''person who has a deposit account'' with ''established customer.'' The result would be definitions of ''customer'' as defined in CIP regulations and ''established customer'' (one whose basic information has been obtained).

One commenter noted that the frequently asked questions (FAQs) developed for CIPs were helpful. Additional questions and answers should be developed as the need arises. This commenter also indicated that FAQs directed at community banks would be helpful as well. Another commenter stated that current regulations fail to distinguish between relationships with individual versus institutional customers. The commenter suggested creating distinctions between such customers.

Three commenters suggested adding more clarification about what types of identification are acceptable. Another commenter made the same point but added that the confusion relates in particular to customers like the Amish and the extent of identification needed. The commenter noted that community banks have had to close accounts and not open new ones because of identification issues. The commenter indicated this has impacted elderly and foreign customers in particular and has given rise to an underground network of financial services.

One commenter said that the definition of ''non-U.S. persons'' under the CIP should be limited to foreign citizens who are not U.S. resident aliens. The current definition, according to the commenter, is too broad and makes providing services to immigrant markets very problematic. The commenter added that the burden of verifying customer information is greater than any benefit.

One commenter noted that some BSA requirements are duplicative. Specifically, the commenter pointed out that BSA requirements for recordkeeping with respect to signature authority duplicates PATRIOT Act CIP requirements. The commenter noted that 31 CFR 103.34 (b)(1) requires that the bank retain each signature card for deposit or share accounts and notations of specific identifying information while section 103.121(b)(2)(ii) requires similar identity verification and documentation. It would make sense to eliminate section 103.34(b)(1) in light of the overlap. The commenter pointed out other redundancies, this one between 31 CFR 103.34(b)(11) (requiring a record of each name, address and taxpayer identification number for purchasers of certificates of deposit (CDs)) and 31 CFR 103.121(b)(2)(i) (requiring the name, date of birth, address, and identification number of each customer). Although section 103.34(b)(11) also requires additional records related to the CD issued, according to the commenter, the identifying information of the customer is redundant and should be deleted.

One commenter recommended requiring business type/occupation documentation at the time of account opening. According to the commenter, this information already is included in CTRs but not for CIPs. The commenter suggested that having this information available up front would enable the government to narrow searches and focus efforts on particular types of businesses or occupations.

One commenter suggested that the Department of the Treasury should review the requirement to obtain and perform verification of a business' Employer Identification Number (EIN) as part of the CIP. The commenter proposed that the Department of the Treasury enable financial institutions to obtain and verify a government-issued identification instead of the EIN. The commenter further proposed that the Department of the Treasury review the requirement to obtain a physical street address for all applicants under the CIP. The commenter noted many customers use postboxes to protect their privacy but the post office nevertheless registers it as a physical address. Finally, this commenter suggested eliminating the record retention requirement imposed by the CIP. The commenter argued that the need to maintain name, physical address, date of birth and taxpayer identification number on the account for five years after the account is closed creates a significant burden for financial institutions. The commenter proposed that the Department of the Treasury consolidate the record retention requirements in the CIP and require that financial institutions maintain the information for five years from the date that the account is opened. Another commenter suggested that records be maintained no more than two years after an account is closed.

Another commenter said that it understood the importance of the CIP but suggested that the renewal requirement for the reliance safe harbor be eliminated. The safe harbor should authorize reliance on an affiliated financial institution without regard to documenting a formal reliance certificate. Yet another commenter questioned whether the current exception for existing customers provides much relief and asked what constitutes ''reasonable belief'' that the financial institution knows the identity of the customer.

One commenter suggested clarification on the discrepancies that exist between the requirement to maintain sufficient information to identify a customer under section 326 of the PATRIOT Act and Regulation B's prohibition on maintaining information on the gender/race of a borrower.

2. Increased Regulatory Burden. There was broad consensus among the commenters that the agencies' regulatory policy with regard to BSA and the PATRIOT Act needs to be clarified. Many commenters expressed their concern about the perceived ''raising of the bar'' concerning BSA programs and policies. Many of these commenters noted that the perception of raising the bar causes banks to file reports in cases where it should not be necessary. Two commenters pointed out what they called the ''disconnect'' between what agency officials are saying about BSA policy in Washington versus what examiners are saying. A commenter asserted that examiners should be looking to help, not punish, bankers seeking to comply with BSA. One commenter suggested that there be regional committees made up of bankers and regulators to formulate effective means to monitor BSA. Another commenter noted that the level of documentation required under AML regulations is too burdensome. This commenter noted that the level of documentation required for small accounts that occasionally cash checks is time consuming. Another commenter proposed, in light of complicated BSA compliance, that there be an agency person located in the bank full time, rather than getting after-the-fact interpretations. Another commenter noted the growing responsibility being placed on banks without sufficient support from the agencies. On a related matter, a number of commenters noted that agency interpretations of BSA requirements are ''unpredictable,'' with four commenters noting that the agencies seem to issue different interpretations, making compliance difficult.

One commenter noted that regulations are created with little direction on how to comply, and with too little time between the final rule and implementation. In the view of this commenter, three to six months is not sufficient, seeing that customers need to be notified, disclosures need to be rewritten, and forms changed. Moreover, state laws (especially BSA and privacy) conflict with federal laws too frequently. This commenter suggested keeping state and federal regulations consistent, reduce record keeping requirements to match exam periods, raise the threshold for reporting, increase the time between a final rule and implementation, provide definitive answers, provide better guidance, and provide a tax credit equal to the cost of regulatory burden.

One commenter noted that, since 1999, the banking industry has had to manage the implementation of new rules or changes to old rules roughly every 1.5 weeks, with BSA rules constituting a significant part of the burden. One commenter called for specific guidance from regulators regarding the identification of high-risk customers. The same commenter suggested that the agencies issue clear guidance with respect to what is needed in the narrative section of SARs. Some commenters suggested that the agencies try to issue uniform guidance—one specifically called for all BSA regulations being joint regulations. One commenter pointed to the 2005 interagency guidelines issued for Money Service Business accounts as the type of joint guidance for which agencies should be striving.

a. Money Services Businesses. Regulatory requirements on this issue drew a lot of criticism, with many commenters calling for a reduction in the due diligence requirements with respect to Money Services Businesses (MSBs). One commenter noted that banks have become the ''unofficial regulator'' of MSBs. The commenter noted that many banks have been forced to close such accounts and that examiners are giving the message that they do not like to see banks working with such businesses. The commenter said that the reporting burden should be on the MSBs, rather than on the banks. One commenter noted that it is not a bank's responsibility to determine if an MSB has registered with FinCEN. One commenter proposed that the threshold for the check casher category be expanded to reduce burden on independent grocery stores, especially those with limited check cashing services as an adjunct to their business; such stores, the commenter said, should not need a full compliance program but rather should just have to comply with CTR and SAR reporting. Another commenter made a similar observation—that large commercial check cashers and payday lenders may pose a risk that smaller ''mom and pop'' shops do not. Another commenter said that the type of account monitoring that is necessary and expectations of examiners need to be clearly defined. Commenters noted the need for regulations setting forth in a clear manner what is considered high- versus low-risk MSB activity. One commenter noted that the cost of monitoring money service businesses is ''prohibitive.'' Moreover, noted this commenter, discontinuing business with such businesses ultimately hurts the wider community. One commenter said that examiners need to have a better understanding of existing guidance on MSBs. One commenter contended that bank responsibility for monitoring such businesses is creating a new class of unbanked businesses, with banks having to close such accounts because the regulatory risks and costs are too high. If banks are to accept such accounts again, the agencies need to reduce regulatory requirements. Another commenter suggested that the emphasis should be on wire transfer departments, and not on small businesses; the commenter added that if MSB work is so important, the government should do it directly, rather than through the banks.

One commenter suggested that a clearer definition of ''check casher'' is needed. Currently, a person becomes a check casher for cashing checks in excess of $1,000 per day. The commenter noted that, on occasion, a business inadvertently exceeds the limit, and questioned whether such a business would be deemed a MSB forever. The commenter suggested that businesses be able to file a statement saying that exceeding the limit was inadvertent and would not happen again. Likewise, the definition of check casher needs to be revised so that an employer who cashes employees' paychecks is not considered a check casher under the regulations.

One commenter noted that MSBs play an important role in providing services to persons who may not have traditional banking relationships. The commenter said that banks need regulators' help to recognize unidentified MSBs. Another commenter asserted that recent guidelines do not provide sufficient relief of costs, burden, and exposure stemming from continued business with MSBs and that the institution is closing out many such accounts.

One commenter asked whether private ATM owners are considered MSBs under existing regulations and urged that the matter be clarified. Another commenter said that businesses should be notified by the state when they apply/renew business licenses that they may qualify as an MSB if they meet certain criteria.

b. Correspondent Accounts/Shell Banks. Commenters' comments included:

- The safe harbor requires certification to open an account and recertification every three years. The recertification process is costly and burdensome and banks are duplicating this effort.
- FinCEN should maintain a central depository where foreign banks could submit their certification and U.S. banks could access it directly through FinCEN.
- The recertification requirement for shell banks should be eliminated or, alternatively, the period for recertifications should be extended to five years. Additionally, the shell bank certification process is burdensome and time consuming and getting recertifications from existing customers is very burdensome. The definition of correspondent account should be clarified, because the current definition is extremely broad and covers virtually every relationship that is, or could be expected to be, ongoing.
- Banks and broker-dealers spend millions to comply with requirements that they obtain ownership and other information from each foreign bank with which they do business and to confirm that the foreign bank has a physical presence in a jurisdiction. There is no evidence that this helps detect terrorist financing or money laundering. Agencies should review the need to continue these practices and adjust the regulations accordingly.
- The costs/burden/regulatory risk associated with foreign correspondent banking had led it to terminate four out of five relationships that it had with foreign correspondent banks. Increased due diligence requirements have turned the bank into a de facto regulator of foreign institutions. The loss of trade financing, payment transfers, etc. could have a negative impact on the economy.
- Correspondent banking relationships are being reduced or eliminated because of BSA demands, yet these relationships are at the height of many banking relationships and the banks in question know their Latin American correspondent institutions well.

c. Sales of Monetary Instruments. Commenters proposed that record retention requirements for selling monetary instruments between $3000 and $10,000 in currency be revised so that only banks that engage in such transactions with persons who are not ''established customers'' would have to comply with the record keeping requirements.

d. Office of Foreign Assets Control Compliance. Commenters proposed that there be a bank safe harbor for Office of Foreign Assets Control (OFAC) compliance. They also requested clarification of institutions' obligations regarding automated clearing house transactions and about how often they should check their customer base against the OFAC list.

e. Politically Exposed Persons. Commenters indicated that the Department of the Treasury should provide a more detailed definition of the term ''Politically Exposed Person,'' or PEP. They noted that the PATRIOT Act requires enhanced scrutiny of private banking accounts of current and former senior foreign political figures, thereby requiring financial institutions to identify such individuals but also their family, businesses, close associates, and others. The commenters stated that it was not possible for banks to undertake such detailed investigations, that the Department of the Treasury should provide a definition of ''senior foreign political figures,'' and what constitutes a relationship in terms of these requirements. Another commenter said that examiners had indicated that enhanced scrutiny is applied to any account/transaction involving PEP, regardless of risk, and recommends clarifying whether the same level of monitoring is expected for PEPs associated with low-risk lines of businesses and products.

Finally, commenters indicated that there are no definitive sources for banks to consult regarding accounts of senior foreign political figures/their families/close associates. Moreover, once someone is deemed a PEP, the regulations do not provide a way to change the designation.

B. Safety and Soundness

1. Corporate Practices. Some commenters recommended that all the Agencies review their operations in the following areas:

- Conduct a study of exam reports to evaluate whether examiners are appropriately distinguishing management from board obligations in their exam findings, conclusions, and recommendations.
- Review existing regulations that examiners rely on to support their prescriptions that directors undertake more managerial-type responsibilities.
- Incorporate additional detailed guidance in examiner training on distinct and different roles of bank management and the board.

2. Appraisal Standards for Federally Related Transactions. Most comments focused on the threshold to obtain an appraisal stating that the $250,000 threshold, which has been the same since implementation of the regulation in the early 1990s, is out of date and burdensome. One commenter remarked that in 1992, the government-sponsored entity conforming loan limit was $202,300, and now it stands at $333,701 (at the time of the comment), yet the *de minimus* amount for the appraisal rule is still $250,000. Some suggested that the threshold be raised from $250,000 to $500,000. Others suggested raising the threshold to a higher level to account for inflation and increased cost of housing, land, and real estate in general.

Other comments questioned the necessity to require an appraisal by a licensed or certified real estate appraiser. One commenter indicated that bank staff can do an adequate job of assessing property valuation. Another commenter indicated that a banker should be able to use the County Assessor's value on loans up to $500,000 without requiring a formal appraisal. Another commenter suggested that assessed values should be permitted as acceptable valuation for some loans since assessed values typically are more conservative than full-market-value appraisals. One banker indicated that it cost $30 to do an appraisal via the Internet (using databases) and $250 to hire an appraiser to visit the property. Yet, in his experience, the Internet information was just as reliable. Another questioned the need for appraisals when the transactions are between a bank and a governmental sponsored entity. Some felt that appraisal standards are too stringent for residential transactions that are sold into the secondary market, particularly given the market discipline imposed by such transactions.

3. Frequency of Safety and Soundness Examinations. Some commenters stated that on-site examinations are a tremendous time commitment and result in significant disruption to the bank and suggested the Agencies should use a risk-based approach when determining examination frequency that results in less frequent on-site examinations for well-managed, well-capitalized institutions. Commenters believed that regulators could satisfy the annual examination requirement with a less burdensome, off-site examination process that uses information already supplied through existing reporting requirements. Other commenters suggested lengthening the examination cycle to 18 to 24 months for banks that have historically exhibited sound banking practices. Commenters recommended that the various regulatory bodies review interim data, conduct informal management reviews, and use discretion to expedite a review cycle when there is more than average risk.

4. Lending Limits. One commenter remarked that the lending limit for national banks is 15 percent of capital and surplus, while Kansas's state-chartered banks have enjoyed a general lending limit of 25 percent of capital and surplus for almost eight years. Many of their national bank competitors would like to see the federal law changed for national banks as well. Another commenter recommended that lending limits be revised upward to state law permissible lending limits.

Several commenters remarked that Regulation O limits on inadvertent overdrafts should be increased from the current level of $1,000.

5. Real Estate Lending Standards. There was no recommendation for changing the real estate lending standards regulation; however, there were a few comments that suggested modifying the interagency guidelines that are attached to the regulation. The commenters remarked that the method of risk calculation does not appropriately measure risk of potential loss. Commenters also stated that the supervisory loan-to-value guidelines hamper the ability of small community banks to compete in the marketplace.

6. Security Devices and Procedures. No comments received.

7. Standards for Safety and Soundness. Commenters stated that the Agencies' rules on safeguarding customer information were unnecessary in light of community bank practices and the rules add cost and burden to their operations. Most commenters believed the information technology requirements are excessive compared to the level of technology available. Some commenters recommended that the Agencies provide risk assessment models to assist in identifying and quantifying possible threats. Some commenters stated that overseeing service providers is burdensome and that the Agencies should provide a model form or checklist. Others asserted that the Agencies should clarify expectations about information security requirements regarding non-affiliated third parties and provide examples on the types of third parties covered and not covered by the guidelines. Most commenters wanted to receive additional guidance on best practices for compliance with the guidelines. Some commenters remarked that examination practices are too burdensome and need to be adjusted to the size and sophistication of each institution. Others expressed their uncertainty about examination results after incurring significant expenses. One commenter stated that the cost for the security review alone totaled $2,000.

8. Transactions With Affiliates. The sole commenter stated that the requirement to prove affiliate arrangements are on terms and under circumstances ''that are substantially the same as those prevailing at the time for comparable transactions with or involving other non-affiliated companies'' is extremely burdensome. The commenter remarked that it is difficult to find cases in which identical services are offered by third parties and stated that while the rule attempts to provide relief in such cases, in practice, it offers little relief. The commenter asserted that 12 U.S.C. 371c–1(a)(1)(b) permits the institution, in the alternative, to prove that it, in good faith, would pay a non-affiliated third party an equivalent fee for similar services. However, in order to respond to an inquiry concerning an institution's reliance on a 12 U.S.C. 371c–1(a)(1)(b), a substantial amount of supporting documentation on the fees and services would be necessary to prove that the fees are not excessive. The commenter believes that there should be an exception to the comparable transaction requirement, or alternatively, a reduced burden of proof required if both the parent and the financial institution subsidiary are rated as financially sound, and the bank is CAMELS ''1'' or ''2'' rated. If there is minimal risk to the FDIC insurance fund (as would be the case for a sound company), the terms of the affiliate transactions should be irrelevant. Alternatively, the commenter suggested that regulators should relieve institutions of the comparable transaction requirement if the total fees paid to the affiliate do not exceed the amount that could be paid to the affiliate in dividends.

9. Safety and Soundness—Board

a. Extensions of Credit by Federal Reserve Banks. No comments received.

b. Limitations on Interbank Liabilities. No comments received.

10. Safety and Soundness—FDIC

a. Annual Independent Audits and Reporting Requirements. Several commenters noted that the exemption from the external independent audit and internal control requirements in 12 CFR part 363 for depository institutions with less than $500 million in assets was adequate. Because of consolidation, together with the application of the public company auditing standard to banks, the exemption needs to be increased to $1 billion to reduce the burden on smaller institutions.

One commenter recommended eliminating the current requirement in part 363 for annual reports by management and external auditors on the effectiveness of internal control over financial reporting for those insured depository institutions with $500 million to $1 billion in assets that are not public companies.

b. Unsafe and Unsound Banking Practices (standby letters of credit, brokered deposits). No comments received.

11. Safety and Soundness—OCC

a. Other Real Estate Owned. No comments received.

12. Safety and Soundness—OTS

a. Audits of Savings Associations and Savings Association Holding Companies. Refer to above comment under FDIC heading.

b. Financial Management Policies. No comments received.

c. Lending and Investments—Additional Safety and Soundness Limitations. A commenter wrote that OTS should eliminate the credit enhancement requirement on mortgage and home equity loans that exceed a 90 percent loan-to-value (LTV) ratio as it creates a competitive disadvantage. The commenter pointed out that the cost of credit enhancement drives qualified customers to nonbanking lenders that do not have such requirements and can offer lower-cost products. The commenter remarked that OTS should eliminate the recordkeeping and reporting requirements for loans that exceed certain LTV limits because they are burdensome and increase overhead costs, which affects loan pricing. The commenter explained that the tracking and reporting requirement is difficult because the association captures the information at the account or customer level, and the regulation requires comparison of loans across systems, and aggregation of loans based on collateral. The commenter further remarked that OTS could adequately address any safety and soundness concerns created by high LTV loans through underwriting policies that ensure that borrowers have the capacity to service such loans.

C. Securities

The federal banking agencies received several comments concerning how the Agencies can reduce regulatory burden with respect to securities regulations. Many of the comments received addressed perceived regulatory difficulties associated with complying with the requirements of the SOX.

1. Regulatory Compliance. One commenter said that penalties governing violations of the securities laws need to be significantly relaxed, adding that offenders should have to contribute to the community from which they took rather than be jailed.

2. Reporting Requirements under the Securities Exchange Act of 1934 (34 Act). The letters contained several comments concerning the increased burden that commenters felt SOX had imposed on public companies, but especially for community banks. Commenters urged the federal banking agencies to work with the SEC to minimize the reporting burden for community banks. These commenters stated that making institutions that are not publicly traded and are less than $1 billion in assets comply with independent audit and independent audit committee requirements is very burdensome and that finding outside professionals to help comply with these requirements, especially in small communities, can be impossible. This commenter noted that it is difficult to attract and retain outside directors for audit committees in view of the risks involved. The threshold should be raised to $1 billion for compliance with such requirements.

Some commenters expressed concern about the cost of section 404 compliance (internal control reports). They said that the effort and expense of additional certifications, documentation, and testing requirements are not commensurate with the operational risks. One commenter noted in particular that community banks lack the internal resources to meet the Public Company Accounting Oversight Board's attestation standard. Banks face much higher consulting costs, and increases in their auditing fees, as well as legal compliance costs.

Other commenters noted that the time spent on section 404 compliance detracts from other matters, such as daily operations, long-term performance, and strategic planning. One commenter said that section 404 compliance requirements had forced banks to abandon regular risk audits in favor of concentrating on section 404 compliance.

Several commenters suggested following the requirements of the FDIC's part 363 instead of having to comply with section 404. The requirement of a separate audit of internal controls has created unnecessary burden; instead, a thorough review of how management reaches its conclusions about internal controls would be as effective, but less burdensome, than the required audit. The independent audit, commenters argued, duplicates work done through a company's internal audit function and senior management. Some commenters suggested that the FDIC and the other agencies work with the SEC to explore how to streamline the audit and attestation process.

One commenter urged scaling back the standards to a reasonable level of inquiry that allows an auditor to opine on the conclusions reached by management. In the opinion of the commenter, there are other protections in place to safeguard the investing public and that make the section 404 burdens ''inappropriate.'' If the SEC does not extend a full exemption to depository institutions, they should revise section 404 to provide for a partial exemption for those institutions exempt from the part 363 requirements—either by changing the regulations or through a change in the law.

a. Acceleration of Filing Deadlines. One commenter noted that, since the passage of SOX, the SEC has accelerated the filing deadlines for periodic reports on Forms 10–Q and 10–K, current reports on Form 8–K, and insider beneficial ownership reports under section 16 of the 34 Act. The commenter noted that smaller public community banks do not have employees dedicated solely to filing these reports. The two-business-day deadline for section 16 reports is especially difficult, because the reports have to be gathered from principal shareholders, directors, and executive officers. The four-business-day filing requirement for Form 8–K creates difficulties. To ease the burden on small banks, the SEC should change the deadline for insured depository institutions to 10 calendar days for filing current reports on Form 8–K and section 16 beneficial ownership reports.

The SEC likewise should freeze current deadlines for periodic reports rather than implement the final step in the acceleration schedule that would require annual reports to be filed within 60 days and interim reports within 35 days.

b. Thrift Securities Issues. One commenter said that OTS should move the requirement in 12 CFR 563.5 that savings association certificates must include a statement about the lack of FDIC insurance to a place where it is adjacent to relevant material and can be more easily found. The commenter specifically suggested moving the section-to-section 552.6–3, which discusses the certificates for savings associations generally. In addition, OTS should delete the notice requirements in sections 563g.4(c) and 563g.12, because it should not be necessary to report the results of an offering 30 days after the first sale, every six months during the offering, and then again 30 days after the last sale.

One commenter suggested that the Board, the FDIC, and the OCC conform their rules to those issued by OTS and permit quarterly, rather than monthly, statements be sent for transactions in cash management sweep accounts. The commenter noted that most investment companies provide statements on a quarterly basis to customers.

c. Confirmation of Securities Transactions. One commenter suggested extending the confirmation period so that it could be given to customers as late as one to two days after completion of the transaction. The Agencies should raise the general exemption from 200 to at least 500 securities transactions for customers over a three-year period, exclusive of government securities transactions.

d. Recordkeeping/Confirmation of Securities Transactions. One commenter suggested revising 12 CFR 12.7(a)(4) because quarterly reports for personal securities transactions does not meet the intended purposes. The commenter contended that the regulation relies on employee disclosure of accounts and requires a great deal of effort for a process that tracks only those transactions that the employee chooses to reveal. The administration of the quarterly process involves tracking statements, updating quarterly forms, identifying new employees quarterly to add to the list, identifying terminated employees for removal from the list, and then tracking the return of the forms. This is a great deal of effort to expend on a process that tracks only those transactions that the employee chooses to reveal. The burden far outweighs the benefit according to this commenter.

IV. Federal Register Notice No. 5—Banking Operations, Directors, Officers and Employees and Rules of Procedure

A. Banking Operations

1. Funds Availability/Regulation CC. Many commenters addressed the provisions of Regulation CC (12 CFR 229) that relate to funds availability.

a. General Comments. Several commenters provided general views on Regulation CC as a whole. One commenter indicated that the commentary to Regulation CC provides extremely helpful examples on how to implement the regulation and suggested that the Board do a comparable commentary for its Regulation D. However, other commenters expressed concern that Regulation CC is too complex and difficult, mainly because of the number of criteria that a bank must consider to determine the maximum hold period for a particular deposit. Another commenter expressed concern that the complexity of the regulations increased banks' legal and compliance risks. Still others indicated that the time periods provided in the availability schedule generally are too long in light of what they perceived as faster clearing times permitted by electronic collection of checks.

Other commenters mentioned that aside from the need to lengthen hold periods for official bank checks and government checks (an issue discussed below) that the generally applicable hold periods should remain unchanged. Some of these commenters argued that only a small percentage of checks are being cleared more expeditiously as a result of the Check 21 Act, and that there has not yet been the industry-wide improvement in collection and return times that would be necessary to warrant shortening hold periods. Some of these commenters argued that shortening hold periods at this time would increase the fraud-related risks of banks that do not clear checks electronically.

b. Comments Relating to Fraud Associated with Next-Day Availability Items. The most frequent comment related to increases in fraud associated with items for which banks must give next-day funds availability, particularly official bank checks, postal money orders, and other items drawn on units of government. Most commenters that identified this issue suggested increasing the generally applicable maximum hold time for these items to increase the likelihood that the depositary bank would learn of the fraud before it was required to make the funds deposited by the fraudulent item available for withdrawal. Some commenters questioned who benefits from expedited availability for official bank checks and government checks and suggested that permissible hold periods for those items could be lengthened without unduly burdening anyone.

In addition, some commenters suggested that, at a minimum, the Board should adopt an interim rule extending availability for fraud-prone items while it figured out how to address the problem permanently. Other commenters suggested that banks were placing extended holds on official bank checks and government checks with the regulators' knowledge and tacit approval, even though doing so violated the EFA Act and Regulation CC. Commenters also expressed concern that the industry, rather than the bank regulators, was taking the lead to address the problems associated with fraud involving next-day availability items.

According to one commenter, Treasury checks and USPS money orders presented the biggest fraud risks associated with next-day availability items because the Department of the Treasury and the USPS, respectively, by statute have longer periods of time than do banks to decide whether or not to a return an item unpaid. The commenter suggested that new accounts were particularly vulnerable to fraudulent Treasury checks and USPS money orders because banks cannot delay the availability of the first $5,000 deposited into a new account by such items and because the bank has less familiarity with the depositor. In addition, this commenter suggested that the Department of the Treasury and USPS should lose their right of return if they did not pay or return an item within seven days. This commenter also asked that the Board revise Regulation CC to provide that an account is new for six months, as opposed to 30 days in the existing rule.

Another commenter indicated that, although many depositary banks that receive next-day availability items attempt to verify the validity of those items, purported issuing institutions are increasingly reluctant to confirm whether they issued a particular check. This commenter suggested that the banking agencies should issue guidance that identifies ways in which banks can reduce the risk of loss associated with fraud related to such checks. The commenter suggested that any such guidance should request that all depository institutions cooperate in addressing this common problem.

Most commenters that addressed the issue of official bank check and government check fraud advocated a regulatory change in response to what they perceived to be a widespread problem. However, other commenters noted that they applied the same availability policy for all but a few checks (presumably by giving faster availability than the law requires for many items) yet had not experienced heightened fraud-related problems because of that practice.

c. Comments on the Scope and Application of Exception Holds. Several commenters advocated changes in the scope of the exception holds that banks may apply to large check deposits, to deposits made in new accounts by official bank checks and government checks, and to checks that the depositary banks has reasonable cause to doubt it cannot collect from the paying bank. Commenters opined that these changes would simplify application of these exception holds and better protect banks.

Under the large deposit exception, up to the first $5,000 of an aggregate deposit by check(s) on a single banking day is subject to the general availability schedule but the bank may place an additional reasonable hold on the amount exceeding $5,000. Similarly, under the new account exception, the bank must make up to $5,000 deposited to a new account on any one banking day by official bank check(s) or government check(s) available according to the generally applicable availability schedule but may delay the availability of the amount exceeding $5,000 until the ninth business day after deposit.

Two commenters suggested that the large deposit exception and the large-deposit provision of the new account exception should allow banks to withhold the entire amount of the relevant large-dollar check deposit. Because the depository bank usually will not learn whether a check is fraudulent for several days after the deposit, these commenters thought that the requirements to make the first $5,000 available left banks vulnerable to fraud, particularly with respect to new depositors.

Another commenter suggested that applying the same hold period for the entire deposit amount also would reduce customer confusion. In some cases, a commenter noted, the EFA Act and Regulation CC allow a bank to place a longer hold on a large deposit in an established account than it can place on a large deposit by official bank check or government check in a new account. The commenter questioned the logic of this result.

Under Regulation CC, a bank can delay availability of the entire amount of a check that it reasonably believes is uncollectible. However, a bank cannot place an exception hold on a check for reasonable cause to doubt collectibility based merely on the fact that a check is of a particular class. In that regard, some commenters suggested that banks should be able to delay availability based on the class to which a check belongs. These commenters indicated that banks were experiencing increasing losses due to credit card checks as a class because a paying bank typically returns a credit card check if charging the consumer's credit card for the amount of the check would exceed the consumer's credit limit. They suggested that banks should be able to delay availability on the basis that a check is a credit card check or, alternatively, that credit card checks should be excluded from the check definition and exempted from Regulation CC's funds availability provisions on that basis.

d. Comments Relating to Notice Requirements and Model Notices. Several comments addressed the notices that Regulation CC requires. One commenter suggested that banks should not be required to provide notice to depositors of changes that improve availability times. Another commenter suggested that the model notice for exception holds is confusing because it lists all the reasons and contains check boxes for each reason. This commenter encouraged the Board to revise the exception hold notice to make it more meaningful to consumers.

e. Comments Relating to Reallocating Liability for Remotely Created Checks. Generally, if a paying bank wants to return a check due to an unauthorized drawer's signature, it must do so by midnight of the next day after it receives presentment of the check. If it misses this deadline, the paying bank generally becomes accountable for the check. One commenter noted that the Board had proposed a rule that would amend Regulation CC to reallocate liability to the depositary bank when a paying bank's customer disputes a check that was remotely created by someone else. This commenter urged the Board to adopt a final rule reallocating liability as soon as possible and thought that such a rule should apply to checks drawn on all types of accounts, preempt inconsistent state laws, include specific loss recovery procedures for handling consumer claims concerning remotely created checks, and provide an effective date six months from publication. This commenter stated that remotely created checks were operationally more analogous to ACH transactions than to other checks. On that basis, the commenter thought that banks should have a 60-day right of return before becoming accountable for remotely created checks and also should have the ability, when recrediting a consumer for an unauthorized remotely created check, to delay availability of the recredit if the account is new or the bank suspects fraud (similar to the exception safeguards applicable to recredit claims for electronic funds transfers).

f. Miscellaneous Comments. Miscellaneous comments included discussion of the treatment of prepaid consumer products. A commenter indicated that prepaid consumer card products should not be considered ''deposits'' for purposes of Regulation D and therefore should not be included as ''accounts'' that are subject to the availability provisions of Regulation CC. Prepaid card products, the commenter noted, typically are activated and available for use promptly after the consumer receives them and that usually there is little or no delay when value is added to an existing, activated card. The commenter further expressed the concern that application of the availability provisions of Regulation CC to prepaid card products would be complex and costly for banks and likely would confuse consumers—consumers who would not experience delays in access to their funds but nonetheless would receive funds availability disclosures.

2. Reserve Requirements/Regulation D. Many comment letters suggested changes to Regulation D (Reserve Requirements of Depository Institutions, 12 CFR 204). The most frequent suggestions were to remove the limitations on the number of convenient withdrawals and transfers per month that may be made from a savings deposit, and to allow for-profit entities to hold interest-bearing NOW account checking accounts. Other suggestions included creating a regulatory commentary, changing reporting practices, and clarifying existing regulatory text.

a. Remove Limitations on Savings Deposit Withdrawals and Transfers. Several commenters suggested that the Board eliminate the regulatory restrictions on the number of certain kinds of transfers and withdrawals that may be made each month from a savings deposit. Some commenters suggested that the Board do away with all limitations; others suggested that the Board eliminate the restrictions on preauthorized or automatic transfers that may be made from savings deposits that are linked to transaction accounts in a ''sweep account'' arrangement, or at least increase the number of such transfers to a higher number, such as 24 per month (i.e., one every business day).

b. Expand Negotiable Order of Withdrawal (NOW) Account Eligibility. Three commenters suggested removing restrictions on eligibility to maintain NOW accounts so that corporate and for-profit entities may maintain them. NOW accounts are interest-bearing checking accounts. NOW accounts function like demand deposits. ''Demand deposits,'' however, are subject to the Regulation Q prohibition against payment of interest (see Regulation Q, *infra*), while NOW accounts are not. NOW accounts are specifically authorized by 12 U.S.C. 1832. Section 1832 limits the types of depositors that are eligible to hold NOW accounts to individuals, non-profit entities, and governmental units.

c. Incorporate Board or Staff Interpretations and Opinions into Regulation or Commentary. Several commenters stated that numerous staff opinions and interpretations relating to Regulation D issues, some dating back many years, are not available on the Board's Web site or in the Board's regulatory publications. These commenters suggested that these opinions and interpretations be collected and incorporated into an official or staff commentary to Regulation D.

d. Miscellaneous Suggestions. Several other commenters made miscellaneous suggestions for amendments to Regulation D. One commenter suggested including U.S. banks' foreign branch deposits in the Regulation D definition of deposit so that such deposits would receive deposit priority over other general obligations of such banks in the event of bank liquidation. Another commenter suggested that the Board should not impose reserve requirements on the liabilities of subsidiaries of parent depository institutions when the parent holds only a recently acquired and relatively insignificant interest in the subsidiary.

One commenter stated that Regulation D and Regulation Q appeared unnecessarily duplicative of similar FDIC regulations (for example, 12 CFR 329, Interest on Deposits) and suggested that the Agencies promulgate joint regulations on these subjects.

In addition, a commenter suggested clarifying the regulatory text of the Regulation D definition of savings deposit, citing the definition's difficulty to read and interpret. This commenter also suggested extending the period of time over which a depository institution's average transaction accounts should be computed so as to reduce ''spikes'' in reserves when transaction accounts rise suddenly and also suggested that there should be reduced regulatory reporting for depository institutions that regularly meet reserve requirements by holding vault cash.

Finally, one commenter suggested that the Board amend the Regulation D definition of deposit to exclude all prepaid card products.

3. Prohibition against Payment of Interest on Demand Deposits/ Regulation Q. Several commenters addressed the Board's Regulation Q (Prohibition against Payment of Interest on Demand Deposits, 12 CFR 217). Of these, the majority suggested that the Board authorize the payment of interest on demand deposits or eliminate the prohibition outright. The other comments suggested expanding the eligibility to hold NOW accounts in order to allow corporations and other for-profit entities to hold interest-bearing checking accounts. One commenter expressed support for Regulation Q in its current state and recommended that it not be repealed.

a. Eliminate Prohibition against Payment of Interest on Demand Deposits. Several commenters suggested that the Board eliminate the prohibition in Regulation Q against the payment of interest on demand deposits. One commenter stated that, if the statutory prohibition against payment of interest on demand deposits were repealed, the Board should allow a two-year phase-in period during which depository institutions could offer MMDAs (savings deposits) with the capacity to make up to 24 preauthorized or automatic transfers per month to a linked transaction account.

4. Reimbursement for Providing Financial Records/Regulation S. Two comment letters addressed the provisions of Regulation S (12 CFR part 219), which relate to a financial institution's right to reimbursement for certain record requests by government authorities.

One commenter stated that the rule contained too many exceptions to the general reimbursement requirement and suggested that the rule require the government to always reimburse the institution unless the institution itself is a target of the investigation to which the request relates. Another commenter stated that the Board should review and update the fee schedule for reimbursements more regularly.

5. Collection of Checks and Other Items by Board and Funds Transfers through Fedwire (Regulation J). No comments received.

6. Assessments. The one commenter, a state association, polled its members and submitted the following summary of the comments it received: Many members believe the current risk-based system recognizes the efforts of sound management and encourages banks to maintain a high rating. Some members expressed strong sentiment that the two insurance funds be merged, and that every institution that benefits from the deposit insurance should have to pay something when they enter the system. One member suggested that other risk factors such as the number of interstate locations, types of products offered, and exam ratings should be factored into the risk-based fee assessment.

7. Assessments of Fees upon Entrance to or Exit from the Bank Insurance Fund or Savings Association Insurance Fund. Two comments were received. One commenter supports legislation that would merge the BIF and SAIF funds. The other commenter believes new entities that open with FDIC coverage, but have not paid into the fund, should pay a substantial entry fee.

8. Determination of Economically Depressed Regions. No comments received.

B. Directors, Officers, and Employees

1. Regulation O. Generally, most commenters requested a review of Regulation O reporting requirements and quantitative thresholds, because they view them as overly burdensome and somewhat ambiguous, with outdated dollar amounts that need updating to reflect today's economy. One industry recommendation for relieving some of the burden without creating more risk to the industry was to ease lending limits and reporting requirements for banks with composite ratings of ''1'' or ''2'' and management ratings of not lower that ''2.'' Another recommendation by community banks was to add a Regulation O summary chart to capture the limitations on loans to various types of insiders in an easy to grasp, comprehensive way, with cross references to Regulation W. Another idea was to review Regulation O interpretive letters issued over the years and convert them into a commentary comparable to the Regulation CC commentary.

2. Management Interlocks. Several commenters asserted that the exemptions in the Board's Regulation L that would allow otherwise prohibited persons to serve in a management position should be drafted in a clearer manner. Most of these commenters also noted that the management interlocks restriction is especially challenging for small community banks, particularly in rural areas.

One commenter said that OTS is the only federal banking agency that takes the position that the Depository Institutions Management Interlocks Act applies to trust-only institutions. The commenter urged OTS to reevaluate its position.

3. Board Composition Requirements. Several commenters requested that OTS amend its regulation to permit a majority of directors of a savings association to be officers or employees of the association as long as the holding company owns at least 60 percent of any class of voting shares of the association.

C. Rules of Procedure

1. Uniform Rules of Practice and Procedure. One comment was received from a trade association that noted that since the Rules of Practice and Procedure were updated within the past five years, its members suggested no significant burden reductions.

The Agencies did not receive any other comments on the individual agency rules of procedures.

*V. **Federal Register** Notice No. 6—Prompt Corrective Action, Capital and Community Reinvestment Act—Related Agreements*

A. Capital

The Agencies requested EGRPRA-related comments on capital regulations as part of a broader joint ANPR seeking comment on proposed risk-based capital guidelines that was published in the **Federal Register** on October 20, 2005. (*See* 70 FR 61068, October 20, 2005.) Few of the comments received addressed burden reduction per se, although a number of the comments did address ways in which capital regulations, and proposed revisions thereto, could contribute to, or ease, financial institutions' regulatory burden. Several comments fit into this category.

1. Opt-Out for Highly Capitalized Banks. Several commenters supported the Agencies adopting an opt-out provision as part of a revised Basel I that would give highly capitalized community banks the option to continue using the existing risk-based capital rules and avoid the regulatory burden of more complex risk-based

rules. One commenter noted that for such banks, computing risk-based capital minimums and ratios using the Basel IA formula could present significant regulatory burden without any corresponding benefit. The same commenter suggested that the opt-out be limited to banks with less than $5 billion in assets that have a capital-to-asset ratio of 7 percent or higher.

2. Number of Risk-Weight Categories. Several commenters said that the revisions to the risk categories should not add additional categories that would create undue regulatory burden for banks.

3. Same Rules for All Institutions. Two commenters noted, with some concern, that the banking agencies tend to develop one size fits all rules, regardless of the number of staff available, or lack thereof, to comply with the rules, as well as the cost to comply, as a percentage of assets. The commenter requested that regulations relate to the true risk that an institution's size and location pose to the banking industry. One of these commenters urged that the federal banking agencies not set a single standard for banks, noting that it could result in significant regulatory burden for some of the less complex banks in the country.

4. General Burden. Several commenters expressed concern that Basel IA could lead to increased regulatory burden for banks not adopting the more advanced Basel II approach. One commenter expressed concern that international banks could face increased burden since the proposed Basel IA rule changes could impose additional and duplicative burdens on their U.S. bank subsidiaries. The commenter noted that many U.S. subsidiaries of international banks do not collect data that Basel IA would require. This commenter urged simplification and flexibility in the standards for Basel IA to reduce or eliminate the need to change existing data systems to meet requirements. A second commenter expressed concern that the proposed capital rules likewise could require banks to develop new data gathering systems that they do not currently have, increasing burden on them.

Another commenter urged the Agencies to give all non-Basel II institutions the option of using either the existing Basel I framework or the proposed Basel IA standard. This commenter urged regulators not to require institutions to calculate a capital charge under Basel IA.

5. Calculation for Disallowed Deferred Tax Assets in Calculating Risk-Based Capital Ratio. One commenter recommended that the Agencies review Call Report instructions and the calculation for disallowed deferred tax assets in calculating risk-based capital ratios. The commenter urged that, for small banks (under $150 million in assets), regulators should eliminate the calculation and simplify the instructions. Outsourcing the calculations, according to the commenter, is not cost-effective for community banks. Since many such banks already hold 12 percent or more risk-based capital, the results of the calculation are insignificant to the overall capital calculations of these banks. The commenter stated that there must be an easier, more cost-effective way of calculating these numbers.

B. Community Reinvestment

The banking agencies' regulations implementing the Community Reinvestment Act (CRA) were not included in the sixth EGRPRA request for comment along with the agencies' other regulations falling within the broader EGRPRA category of Community Reinvestment (*i.e.*, the CRA Sunshine regulations, discussed under B.3 below).[64] During the past two years, the agencies solicited comment, separately from the EGRPRA process, on burden reduction measures for their CRA regulations and received voluminous comments in response.[65] The banking agencies have adopted final rules revising the CRA regulations, mindful of the comments related to burden reduction.[66] The banking agencies felt it appropriate to include a summary of the comments to the CRA rules in this report on regulatory burden, however, because the regulatory burden imposed by community reinvestment rules was one of the foremost topics raised by commenters to the CRA rules, at the EGRPRA outreach meetings as well as in written comments submitted in response to the EGRPRA requests for comment. The following summarizes those comments, divided into those comments received by the Board, FDIC, and OCC in response to their joint notice requesting comment, and those received in response to the separate OTS request for comment.

1. CRA Proposed Interagency Rulemaking. Together the federal banking agencies received over 10,000 public comments from consumer and community organizations, banks and industry trade associations, academics, federal and state government representatives, and individuals on the Agencies' proposal to reduce undue regulatory burden by extending eligibility for streamlined lending evaluations and the exemption from data reporting to banks under $1 billion without regard to holding company affiliation.

a. Increase in Size Threshold for Small Banks from $250 million to $1 billion. Most banks were supportive of changing the threshold for small institutions. Community organizations opposed the proposal stating that an increase would cause banks to reduce their investments and services in low- and moderate-income areas and result in a reduction in the public data available. Some community organizations criticized the proposal to adjust the asset threshold annually for small and intermediate small banks based on changes to the Consumer Price Index (CPI), while most banks supported tying the small and intermediate small bank thresholds to changes in the CPI.

b. Community Development Test for Intermediate Small Banks. Many banks opposed the creation of separate new standards and suggested institutions with less than $500 million in assets be evaluated under the streamlined small bank lending test. Most community organizations supported the requirement for a bank to engage in all three activities to earn a satisfactory rating on the Community Development Test (CDT) and asserted that the primary consideration should be the institution's responsiveness to community needs. Many banks and industry trade associations commented favorably on the flexibility that the CDT offered and some large banks requested that the CDT be made available to banks with assets of $1 billion or more. A number of banks and trade associations supported raising the threshold without creating a tier of intermediate small banks (ISBs) that would be subject to the CDT. A few banks stated that the regulatory burden reduction would not be realized if banks continue to collect information under the proposed CDT. A number of community organizations supported the evaluation of ISBs under a CDT and a streamlined lending test.

[64] *See* 71 FR 287, January 4, 2007.

[65] *See* 66 FR 37602, July 19, 2001 (Joint Advance Notice of Proposed Rulemaking); 69 FR 5729, February 6, 2004 (Joint Notice of Proposed Rulemaking); 69 FR 51611, August 20, 2004 (FDIC Notice of Proposed Rulemaking); 69 FR 56175, September 20, 2004 (FDIC extension of comment period for proposed rule); 69 FR 68257, November 24, 2004 (OTS Notice of Proposed Rulemaking); and 70 FR 12148, March 11, 2005 (OCC, the Board, and FDIC Notice of Proposed Rulemaking).

[66] *See* 69 FR 51155, August 18, 2004 (OTS Final Rule); 70 FR 10023, March 2, 2005 (OTS Final Rule); and 70 FR 44256, August 2, 2005 (OCC, the Board, and FDIC Final Rule).

c. Community Development Definition. Banks and community organizations generally supported expanding the definition to make bank activities eligible for community development consideration in a larger number of rural areas. Comments were received on defining ''rural'' using existing government definitions (Office of Management and Budget and Census Bureau) and community organizations offered a variety of suggestions. Banks favored revising the definition to include activities in a designated disaster area; some community organizations opposed the revision. Banks expressed concerns about many banks having few or no eligible tracts in their assessment areas, increasing pressure to make community development investments outside of their assessment areas. Banks asked that any rule distinguishing ''underserved'' rural areas be simple. Some expressed concern that using the CDFI Fund's criteria for distressed areas would be complicated and cause uncertainty, but some indicated the criteria were appropriate. Many banks suggested that an area be eligible regardless of its income if targeted by a government agency for redevelopment. Community banks expressed a strong preference that a bank's support for meeting community needs such as education be considered as ''community development'' in rural communities of all kinds, not just ''underserved'' or ''low- or moderate-income'' communities. Community organizations disagreed that all rural areas should be eligible, but agreed that more rural areas should be eligible than are now. Many requested that the Agencies consider both expanding the standard for classifying rural tracts as low- or moderate-income and adopting criteria such as the distress criteria of the CDFI Fund to identify additional eligible tracts. At the same time, community organizations generally sought to keep the proportion of eligible rural tracts in rough parity with the proportion of eligible urban tracts.

d. Effect of Certain Credit Practices on CRA Evaluations. Most community organizations strongly supported the proposal and recommended that the provision be expanded to include evidence of discriminatory or other illegal credit practices by any affiliate of a bank. Some banks and industry trade associations opposed the standard as unnecessary because other legal remedies are available to address discriminatory or other illegal credit practices and opposed extending the ''illegal credit practices'' standard to loans by an affiliate that are considered in a bank's lending performance. A few large banks were concerned that their CRA performance would be adversely affected by technical violations of law.

2. CRA Proposed Rulemaking—OTS. OTS received an overwhelming number of comments on the CRA NPR issued in 2004. Most comments were from financial institutions and their trade associations (Financial Institution Comments) or from consumer and community members and organizations (for example, civil rights organizations, Community Development Corporations, Community Development Financial Institutions, community developers, housing authorities, and individuals) (Consumer Comments). Other commenters included members of Congress, other federal government agencies, and state and local government agencies and organizations.

The Financial Institution Comments strongly supported raising the asset threshold and eliminating the holding company test. Most of these commenters expressly supported raising the asset threshold beyond the level in the proposed rule. Most suggested thresholds ranging from $1 billion to $2 billion. Many commenters argued that raising the asset threshold would reduce regulatory burden and allow community banks to focus their resources on economic development and meeting credit demands of the community, rather than compliance burdens. They also asserted that raising the asset threshold was necessary to reflect consolidation in the bank and thrift industries. Other commenters noted that raising the asset threshold to $1 billion would have only a small effect on the amount of total industry assets under the large institution test but would provide substantial additional relief by reducing the compliance burden on more than 500 additional institutions.

The consumer comments strongly opposed raising the asset threshold and urged the banking agencies to withdraw the proposed rule. Most of the comments focused on the proposed raising of the asset threshold to $500 million but did not specifically mention the proposed elimination of the holding company test. Many consumer comments argued that raising the asset threshold would eliminate the investment and service parts of the CRA examination for many institutions, would reduce the rigor of CRA examinations, and would lead to less access to banking services and capital for underserved communities. In particular, these commenters argued that Low Income Housing Tax Credits and Individual Development Accounts would suffer, diminishing the effectiveness of the Administration's housing and community development programs. The commenters observed that this would be contrary to the statutory obligation on financial institutions to affirmatively serve credit and deposit needs on a continuing basis. Commenters also noted that the change would disproportionately affect rural communities and small cities where smaller institutions have a significant market share. Other consumer comments emphasized the need for rural banks and other depository institutions to serve the investment and deposit needs of all the communities in which they are chartered and from which they take deposits.

Comments from members of Congress were mixed. One commenter supported raising the asset threshold to $1 billion. It stated that such a move would not have a significant impact on the total amount of assets nor the total number of institutions covered by the large institution examination, but would provide relief to many additional institutions. Other commenters opposed raising the asset threshold. OTS received other letters from members of the U.S. Senate that generally echoed the consumer comments discussed above.

3. Disclosure and Reporting of Community Reinvestment Act—Related Agreements (CRA Sunshine Act)—12 CFR part 35; 12 CFR 207 (Regulation G); 12 CFR part 346; 12 CFR part 533. The Agencies received several written comments on the CRA Sunshine Act requirements and comments were made at several of the Agencies' outreach meetings. One commenter representing an industry trade association believes that the implementing regulations do hold the regulatory burden on community organizations and financial institutions to a minimum, consistent with the requirements of the statute. Another commenter representing a financial institution stated that the regulation has not affected its level of CRA activity; however, the additional disclosure and reporting has increased the time, effort and cost to comply. In addition, the commenter remarked that the benefits of disclosing the information have yet to be publicly communicated and believes the regulation should be repealed. Yet another commenter representing financial institutions stated that Congress should repeal the Act because it does not further the purposes of the CRA and imposes significant paperwork, regulatory and cost burdens on banks that far outweigh any benefits. This commenter believes the law does not further the interests of communities;

instead, it wastes resources that could be better deployed to serving the affordable credit and financial services needs of communities. Short of repeal of the law, the commenter urges the Agencies to completely overhaul the implementing regulations.

Other comments from bankers, consumer groups, and outreach meeting participants were also supportive of repealing the provisions of the Act. In the interim, commenters suggested that the Agencies take steps to reduce unnecessary burden. Commenters also suggested the Agencies clarify that only those agreements that would have a material impact on a bank's CRA rating should be disclosed, so long as community groups' First Amendment or other constitutionally protected rights were preserved.

Commenters also stated that the theory the provisions were based on were flawed and disclosures filed have not exposed any pattern of improper payments by banks to community groups and that allegations that community groups have succeeded in using CRA mainly as a vehicle for funding their organizations are baseless. Instead, commenters contended that the CRA Sunshine Act has imposed an additional and unnecessary burden on both banks and nonprofits and that confusion as to the circumstances and contacts that trigger disclosure remain. Commenters argue that repeal would facilitate the flow of capital to affordable housing, small business, and community development financing for low- and moderate-income people and communities. In addition, a commenter recommends:

- Exempting all CRA contacts that arise in the context and purpose of ordinary CRA business dealings, absent any coercive aspect.
- Allowing disclosure should only be triggered by comments or testimony made in conjunction with CRA-related agreements during a CRA examination or a deposit facility application process.
- Revising the material impact standard and make it, not CRA contact, the trigger for requiring disclosure under the proposed rule.
- Providing a reporting exemption for non-negotiating parties of a CRA agreement.

Appendix I–D: Economic Growth and Regulatory Paperwork Reduction Act 12 U.S.C.A. 3311

United States Code Annotated

Title 12. Banks and Banking

Chapter 34. Federal Financial Institutions Examination Council

Section 3311. Required review of regulations

(a) In general

Not less frequently than once every 10 years, the Council and each appropriate federal banking agency represented on the Council shall conduct a review of all regulations prescribed by the Council or by any such appropriate federal banking agency, respectively, in order to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions.

(b) Process

In conducting the review under subsection (a) of this section, the Council or the appropriate federal banking agency shall—

(1) categorize the regulations described in subsection (a) of this section by type (such as consumer regulations, safety and soundness regulations, or such other designations as determined by the Council, or the appropriate federal banking agency); and

(2) at regular intervals, provide notice and solicit public comment on a particular category or categories of regulations, requesting commentators to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome.

(c) Complete review

The Council or the appropriate federal banking agency shall ensure that the notice and comment period described in subsection (b)(2) of this section is conducted with respect to all regulations described in subsection (a) of this section not less frequently than once every 10 years.

(d) Regulatory response

The Council or the appropriate federal banking agency shall—

(1) publish in the **Federal Register** a summary of the comments received under this section, identifying significant issues raised and providing comment on such issues; and

(2) eliminate unnecessary regulations to the extent that such action is appropriate.

(e) Report to Congress

Not later than 30 days after carrying out subsection (d)(1) of this section, the Council shall submit to the Congress a report, which shall include—

(1) a summary of any significant issues raised by public comments received by the Council and the appropriate federal banking agencies under this section and the relative merits of such issues; and

(2) an analysis of whether the appropriate federal banking agency involved is able to address the regulatory burdens associated with such issues by regulation, or whether such burdens must be addressed by legislative action.

CREDIT(S)

(Pub. L. No. 104–208, Div. A, Title II, Section 2222, September 30, 1996, 110 Stat. 3009–414.)

II. NCUA Report

A. Introduction

The National Credit Union Administration (NCUA), an independent regulatory agency within the executive branch, oversees the nation's system of federal credit unions (FCU) and provides federal share insurance for all federally insured credit unions. Throughout the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) process, NCUA participated in the planning and comment solicitation process with the other Federal Financial Institutions Examination Council (FFIEC) agencies. Because of the unique circumstances of federally insured credit unions and their members, however, NCUA issued its notices separately from the other FFIEC agencies. NCUA's notices were consistent and comparable with those published by the other FFIEC agencies, except on issues unique to credit unions. As required by EGRPRA, the NCUA invited public review and comment on any aspect of its regulations that are outdated, unnecessary, or unduly burdensome.

Accordingly, this NCUA report, provided separately from that of the other FFIEC agencies, summarizes the comments NCUA received. The NCUA report also identifies and discusses the significant issues raised by commenters.

The regulatory review required by EGRPRA has provided a significant opportunity for the public and NCUA to step back and review groups of related regulations and identify possibilities for streamlining. The EGRPRA review's overall focus on the ''forest'' of regulations offers a new perspective in identifying opportunities to reduce regulatory burden. Of course, reducing regulatory burden must be consistent with ensuring the continued safety and soundness of federally insured credit unions and appropriate consumer protections.

EGRPRA also recognizes that burden reduction must be consistent with NCUA's statutory mandates, many of which currently require implementing regulations. In response to the review process, commenters highlighted certain areas in which legislative changes might be appropriate. In this respect, the NCUA has carefully considered the relationship among burden reduction, regulatory requirements and statutory mandates.[67] Section V of this NCUA report describes the statutory changes affecting credit unions in the Financial Services Regulatory Relief Act of 2006 (FSRRA), enacted by Congress in October 2006.

Finally, NCUA has, independent of EGRPRA, developed and implemented its own regulatory review process. Since 1987, a formally adopted NCUA policy requires review of NCUA regulations at least once every three years with a view toward eliminating, simplifying, or otherwise easing the regulatory burden.[68] The review includes an internal review and solicitation of public comments concerning many of the same aspects that EGRPRA also involves. Considered together, these two processes enable NCUA to conduct an ongoing, comprehensive review of its rules and regulations with a view toward improving regulatory structure, systems, and efficiency.

B. NCUA Methodology

As required by EGRPRA, NCUA first categorized its regulations by type, such as ''consumer regulations'' or ''safety and soundness'' regulations. NCUA categorized its regulations into 10 broad categories. A listing of the regulations by category is attached as Appendix II–A of this report. Next, the FFIEC agencies provided notice and solicited comment from the public on one or more of these regulatory categories. Notices were published in the **Federal Register** for a 90-day comment period. A summary of the comments received by NCUA, including the **Federal Register** citation, is attached as Appendix II–B of this report; a summary of the comments received by the other FFIEC agencies is in Appendix I–C.

1. Outreach. Through numerous programs and policies, NCUA conducts outreach to credit unions and the public and provides opportunities for individuals, groups and institutions affected by or interested in credit unions to communicate with the agency. These include programs such as Access Across America, in which NCUA principals travel the country and solicit input, ideas, and policy suggestions from credit unions and their members on a wide range of topics. The agency also has a national ombudsman who investigates complaints relating to regulatory issues and recommends solutions on matters that cannot be resolved at the operational (regional) level. The agency has an active Web site, with comprehensive contact information for all program offices. The Web site also discloses travel schedules for NCUA's board members, who travel extensively throughout the country to speak and listen to concerns of credit unions and their members. In view of these programs, NCUA did not participate in the banker or consumer outreach meetings the FDIC held at various locations during 2004 and 2005.

C. Significant Issues Raised

NCUA received a total of 41 comments in response to its 6 notices. Some of the comments addressed rules administered by the Federal Reserve Board affecting all depository institutions, including credit unions, and those comments were forwarded to the Federal Reserve Board for consideration. With respect to matters exclusively relating to credit unions, the most significant issues raised and the agency's response follows, including NCUA's evaluation of the merits of suggested rule changes as well as a description of any action the agency has taken.

1. Anti-Money Laundering. The area of Bank Secrecy Act compliance has grown in significance in recent years, along with concerns about personal and financial privacy among consumers. Several commenters sought guidance and clarification from NCUA about filing Suspicious Activity Reports (SARs). In addition to a request for additional guidance, several commenters recommended raising the threshold for filing Currency Transaction Reports from the current $10,000 trigger, as well as raising the monetary instruments trigger and the money laundering trigger. One commenter sought an outright exemption from the filing requirements for small credit unions. Two commenters recommended merging the Office of Foreign Assets Control with the Financial Crimes Enforcement Network.

NCUA is not the primary agency with responsibility for these rules. Nevertheless, NCUA is concerned about the need for clearer guidance for credit unions in fulfilling their obligations in this area. Effective November 27, 2006, NCUA issued a final rule modifying section 748.1(c) of its rules to clarify the reportable activity this section covers, identifying important filing procedures and highlighting record retention requirements. The final rule addresses other key aspects of the SAR process, including the confidentiality of the reports and safe harbor information. The rule requires a credit union to inform its board of directors promptly of its SAR reporting activity.

While the changes expand the amount of information in the rule, they do not increase regulatory burden. The changes are intended to provide fundamental information about the SAR process in a single location to facilitate the ability of credit unions to access reporting and filing requirements quickly. The board notification provision formalizes a common practice and, together with the other proposed changes, provides consistency with the SAR regulations established by the other FFIEC regulators. The changes are not intended to and do not eliminate the need for credit unions to review the instructions accompanying the SAR form and the requirements of 31 CFR 103.18, which may be necessary to ensure a report is accurately and fully completed.

2. Risk-Based Capital. Several comments called for a risk-based approach to capital requirements for federal credit unions (FCUs). One noted that credit unions are unique among financial institutions in their regulatory capital structure, which makes only limited distinctions in the types or quality of assets in determining their capital position. These commenters assert an approach to capital that takes into account the various types of assets FCUs hold would provide greater flexibility and better protection against risks to safety and soundness.

NCUA agrees with these comments but notes that a change to the FCU Act is required to implement them. In 2005, NCUA prepared and submitted to Congress a proposal for a risk-based capital program coupled with a prompt corrective action (PCA) enforcement plan. Since that time, NCUA has met

[67] Credit unions are also subject to regulations issued by other nonbanking agencies, such as rules issued by the Department of Housing and Urban Development (under Real Estate Settlement Procedures Act of 1974) and by the Department of the Treasury (under the BSA including rules required by the PATRIOT Act). The rules of these other agencies are beyond the scope of NCUA's EGRPRA review and NCUA's jurisdiction. NCUA intends, however, to alert the relevant agencies about comments it has received raising significant issues regarding these related rules.

[68] Interpretive Ruling and Policy Statement (IRPS) 87–2, 52 FR 35231 (September 8, 1987), as amended by IRPS 03–2, 68 FR 32127 (May 29, 2003).

with members of Congress and with representatives of the Department of the Treasury to discuss the proposal and to respond to questions or concerns. As of year-end 2006, Congress had not enacted legislation implementing the risk-based capital program.

In 1998, Congress amended the FCU Act to apply PCA requirements to federally insured credit unions based on net worth levels. A credit union is considered:

- ''Well capitalized'' if it has a net worth ratio of not less than 7 percent,
- ''Adequately capitalized'' if it has a net worth ratio of not less than 6 percent,
- ''Undercapitalized'' if it has net worth below 6 percent,
- ''Significantly undercapitalized'' if it has a net worth ratio of less than 4 percent, and
- ''Critically undercapitalized'' if it has a net worth ratio less than 2 percent.

A credit union whose capital ratio falls below 6 percent is required to produce a net worth restoration plan and may also be subject to other regulatory requirements. A credit union that becomes undercapitalized is subject to specific restrictions on asset growth and the ability to make member business loans. In cases involving a credit union that is critically undercapitalized, the NCUA Board has 90 days to take action as the Board determines, such as conserving, liquidating the credit union or other appropriate action.

NCUA and federally insured credit unions have had more than seven years of experience operating under the 1998 PCA rules. This experience, as supported by the Call Report data, indicates the PCA categories set by statute are too high. NCUA believes they operate to penalize low risk institutions, which results in an inefficient use of capital. The categories also overshadow any risk-based system and limit the benefits of behavior modification that would otherwise flow from a robust risk based PCA requirement. The rules also contribute to unwarranted bias against credit union charters by establishing a ''one-size-fits-all'' effect for federally insured credit unions and create inequities in treatment for the required deposit in the National Credit Union Share Insurance Fund (NCUSIF) and membership capital in corporate credit unions.

NCUA believes the statutory mandate to take prompt corrective action to resolve problems at the least long-term cost to the NCUSIF is sound public policy. Further, this policy is consistent with NCUA's fiduciary responsibility to the NCUSIF. However, PCA for credit unions does not adequately distinguish between low-risk and higher risk activities.

The current PCA system's high leverage requirement (ratio of net worth to total assets) coupled with the natural tendency for credit unions to manage to capital levels well above the PCA requirements essentially creates a one-size-fits-all system. This penalizes institutions with conservative risk profiles. While providing adequate protection for the NCUSIF, a well-designed, risk-based system with a lower leverage requirement would more closely relate required capital levels with the risk profile of the institution and allow for better use of capital.

The current high leverage ratio imposes an excessive capital requirement on low-risk credit unions. With a lower leverage requirement working in tandem with a well-designed, risk-based requirement, credit unions would have a greater ability to serve members and manage their compliance with PCA. By managing the composition of the balance sheet, credit unions could shift as needed to lower risk assets resulting in the need to hold less capital. A PCA system comparable to that in the banking system would provide sufficient protection for NCUSIF. Such a system for credit unions would also remove charter bias and level the playing field by eliminating differing capital standards unrelated to risk. While credit unions cannot raise capital as quickly in some cases as other financial institutions, the majority of credit unions have a relatively conservative risk profile (driven by the restrictions of powers relative to other institutions and their cooperative, member-owned structure) and a comparatively low loss history. Thus, credit unions should not be required to hold excessive levels of capital.

3. Field of Membership and Chartering. This subject generated the greatest number of comments. The following reflects the most significant issues. Commenters suggested:

- Eliminating the requirement that a proposed group to be added to an existing credit union's membership must be located in ''reasonable geographic proximity'' to a credit union's service facility or alternatively permitting a shared ATM or other shared facility to meet this requirement. In addition, with respect to adding groups to an existing charter, commenters suggest eliminating the requirement that a group (as opposed to the credit union) must provide documentation about its ability and willingness to establish and support a credit union of its own.
- Removing the preference that groups with membership in excess of 3,000 consider forming their own credit union rather than joining an existing credit union, and clarifying that the preference is not applicable in the case of voluntary mergers of credit unions.
- Allowing an FCU that converts to a community charter to retain select employee groups located outside the community.
- Allowing an FCU to provide check cashing and wire transfer services to nonmembers.

The last of these items was addressed, with NCUA support, in the FSRRA, and FCUs may now provide check cashing and wire transfer services to nonmembers within their field of membership. Full implementation of the remaining suggestions would require legislative action to change the FCU Act. With respect to the first proposal, NCUA believes the current geographic proximity requirement is appropriate. As noted in NCUA's Chartering and Field of Membership Manual (Manual), groups served by a credit union must have access to a service facility. As further clarified in the Manual, the lack of availability of other credit union service is a factor to be considered in this respect. The Manual also describes a variety of service facility types, such as owned branches (including mobile branches) and proprietary ATMs that meet this requirement. A shared ATM does not qualify as a service facility within this meaning. The Manual describes circumstances in which a shared branch or other shared facility will qualify. Overall, as reflected by the Manual, NCUA continues to believe accessibility to credit union services must remain as the primary consideration in determining whether a proposed group should be included within a credit union's field of membership.

Similarly, NCUA does not support a change to the statutory bias in favor of groups numbering more than 3,000 actual and potential members chartering their own credit union. NCUA believes every group would benefit from having its own credit union if it has the resources necessary to make the venture viable. The Manual provides sufficient flexibility for credit unions to accept groups over 3,000 where stand-alone viability, properly documented, is unlikely, and NCUA is not aware of undue burden arising from this requirement. In mergers, NCUA interprets the FCU Act to require a similar analysis where a group numbering greater than 3,000 is served by a credit union proposing to merge with another credit union, except in cases where the continuing credit union is also providing services to the same group. NCUA supports a change to the FCU Act to eliminate this requirement in the case of mergers.

NCUA supports the other chartering suggestions. The agency perceives little or no benefit from requiring a credit union that converts from a multiple common bond or occupational charter to a community charter to exclude employee groups currently served by the credit union from continued service under the community charter. Credit unions should not be required to face the difficult choice of converting to a community basis or maintaining fidelity with a group that formed the original basis for the charter but which may no longer represent an economically viable basis for continued operations. NCUA notes, in this respect, that many credit unions faced with this dilemma have elected to surrender their federal charter in favor of a state charter.

4. Member Business Lending. In the area of member business lending, commenters suggested it would reduce regulatory burden if NCUA could:

- Raise the level below which a member business loan does not count against the aggregate ceiling for member business loans by a single credit union from $50,000 to $100,000.
- Raise or eliminate the aggregate member business loan ceiling, which currently stands at the lesser of 1.75 times a credit union's net worth or 12.25 percent of its total assets.

Commenters assert that credit unions making member business loans do not adversely affect the profitability of other financial institutions. Moreover, they assert, credit unions frequently provide business loans in amounts and circumstances that many commercial banks will not. These credit union loans fulfill credit needs of small businesses and sole proprietorships, many of which operate on a scale too small to attract the interest of commercial banks; in many cases, they are not able to afford the rates and charges imposed by more traditional commercial lenders.

Changing these restrictions requires changing the FCU Act. NCUA concurs in the points made by the commenters and supports both a change in the aggregate limits and an increase in the threshold below which a member business loan need not be counted against the aggregate limits. The agency believes FCUs have shown an excellent capacity for making prudent lending decisions in this area and also that its rules provide an adequate regulatory framework.

Another comment made in this area was that NCUA should take steps to align its member business rules with SBA's lending requirements to facilitate FCU participation in various SBA guaranteed lending programs. NCUA amended its member business lending rule in October 2004 specifically to accomplish this objective. Results have been excellent, with many credit unions now availing themselves of the SBA guarantee, to the significant benefit of both credit unions and small business members. Effective January 20, 2006, NCUA again amended its member business lending rule, this time to broaden the definition of construction and development loans.

D. Accomplishments and Burden Reduction Efforts

1. NCUA's Regulatory Flexibility Program. Independent of the EGRPRA burden reduction initiative, NCUA established a Regulatory Flexibility Program (RegFlex) in 2002 to exempt qualifying credit unions in whole or in part from a series of regulatory restrictions. Qualifying credit unions are also granted certain additional powers. (*See* 12 CFR 742.) A credit union may qualify for RegFlex automatically or by application to the appropriate Regional Director. To qualify automatically for RegFlex, a credit union must have a composite CAMEL rating of "1" or "2" for two consecutive examination cycles and, as originally conceived, was required to achieve a net worth ratio of 9 percent (200 basis points above the net worth ratio to be classified "well capitalized") for a single Call Reporting period. If a credit union is subject to a risk-based net worth (RBNW) requirement, however, the credit union's net worth must surpass that requirement by 200 basis points.

A credit union unable to qualify automatically for RegFlex may apply to the appropriate Regional Director for a RegFlex designation if it has a CAMEL "3" rating or better or meets the net worth criterion. A Regional Director has the discretion to grant RegFlex relief in whole or in part to an eligible credit union. A credit union's RegFlex authority can be lost or revoked. A credit union that qualified for RegFlex automatically is disqualified once it fails, as the result of an examination (but not a supervision contact), to meet either the CAMEL or net worth criteria in the rule. (*See* 12 CFR 742.6.) RegFlex authority can be revoked by action of the Regional Director for "substantive and documented safety and soundness reasons" (*see* 12 CFR 742.2(b)). The decision to revoke is appealable to NCUA's Supervisory Review Committee, and, thereafter, to the NCUA Board. (*See* 12 CFR 742.7.) RegFlex authority ceases when that authority is lost or revoked, even if an appeal of a revocation is pending. (*Id.*) Past actions taken under that authority are "grandfathered," i.e., they will not be disturbed or undone.

From its inception, the RegFlex program has given qualifying credit unions relief from the following regulatory restrictions:

- Fixed Assets. The maximum limit on fixed assets (5 percent of shares and retained earnings) (*see* 12 CFR 701.36(c)(1));
- Nonmember Deposits. The maximum limit on nonmember deposits (20 percent of total shares or $1.5 million, whichever is greater) (*see* 12 CFR 701.32(b));
- Charitable Contributions. Conditions on making charitable contributions (relating to the charity's location, activities and purpose, and whether the contribution is in the credit union's best interest and is reasonable relative to its size and condition) (*see* 12 CFR 701.25);
- Discretionary Control of Investments. The maximum limit on investments over which discretionary control can be delegated (100 percent of credit union's net worth) (*see* 12 CFR 703.5(b)(1)(ii) and (2));
- Zero-Coupon Securities. The maximum limit on the maturity length of zero-coupon securities (10 years) (*see* 12 CFR 703.16(b));
- "Stress Testing" of Investments. The mandate to "stress test" securities holdings to assess the impact of a 300-basis-point shift in interest rates (*see* 12 CFR 703.12(c));
- Purchase of Eligible Obligations. Restrictions on the purchase of eligible obligations (*see* 12 CFR 701.23(b)), thus expanding the range of loans RegFlex credit unions can purchase and hold as long as they are loans those credit unions would be authorized to make (auto, credit card, member business, student, and mortgage loans, as well as loans of a liquidating credit union up to 5 percent of the purchasing credit union's unimpaired capital and surplus).

Along with amendments to parts 703 (investments) and 723 (member business loans) in 2003, RegFlex credit unions received further relief from the following restrictions:

- Member Business Loans. The requirement that principals personally guarantee and assume liability for member business loans (*see* 12 CFR 723);
- Borrowing Repurchase Transactions. The maturity limit on

investments purchased with the proceeds of a borrowing repurchase transaction; (*Id.*); and

- Commercial Mortgage-Related Securities. The restriction on purchasing commercial mortgage-related securities of issuers other than the government sponsored enterprises (*Id.*)

In 2005, the NCUA Board reassessed the RegFlex program to ensure its continued availability to credit unions least likely to encounter safety and soundness problems, thus minimizing the risk of loss to the NCUSIF. The agency's experience indicated these credit unions consistently maintain a high net worth ratio and a high CAMEL rating. Accordingly, the NCUA Board issued a proposed rule reducing from 9 percent to 7 percent the minimum net worth ratio to qualify for RegFlex, but extending from one to six quarters the period the minimum net worth must be maintained to qualify. That rule was finalized in February 2006.

2. Improvements to NCUA Call Report (Form 5300). Like the other federal financial institution regulators, NCUA requires all federally insured credit unions to file periodic reports with the agency. (*See* 12 CFR 741.6.) Effective with the reports due for the second quarter of 2006, NCUA made significant revisions to the form 5300. The revised Form NCUA 5300 consolidates information, reduces ancillary schedules, and is easier to read and use. Based on the revisions, the short form is no longer needed, and the new design provides many benefits for credit unions. The Call Report will be consistent in form each cycle, which should assist smaller credit unions in completing the form. The form is now shorter—16 pages, compared to 19 pages in the previous version. In addition, the revised form is designed so small credit unions generally will not have to complete supporting schedules. Only the first 10 pages require input by all credit unions. For comparison, the previous short form was only 8 pages, but the new, easier format will reduce the burden.

The new design also provides efficiencies and benefits to NCUA. By eliminating the short form, the NCUA only has to maintain one 5300 form, one set of edits and warnings, and one set of Financial Performance Report specifications. This will improve efficiency and reduce the likelihood of introducing errors in the reporting system. In addition, the cost of printing and mailing will be reduced with the distribution of a single form. Both internal and external quarterly financial trend analysis will be improved, since all credit unions will report comprehensive quantitative data. Further, the shift to one Call Report will simplify maintenance of the Financial Performance Report and provide additional data needed for small credit unions to use the expanded Financial Performance Report fully. Additionally, trend reports from NCUA's Automated Integrated Regulatory Examination System (AIRES) will be more consistent and detailed for smaller credit unions. For example, quarterly detail that is currently not provided for real estate loans and investments will be available. In summary, the consolidation of the Call Report and elimination of the Form NCUA 5300SF will improve the agency's efficiency, increase the accuracy of the information collected, and simplify the reporting process for credit unions, large and small.

3. Other Regulatory Burden Reduction Efforts. Effective July 3, 2003, NCUA amended its investment rule for FCUs. (*See* 12 CFR 703.) The amendments clarified and reformatted the rule to make it easier to read and locate information. The amendments expanded FCU investment authority to include purchasing equity-linked options for certain purposes and exempted RegFlex eligible FCUs from several investment restrictions. As noted previously, NCUA made changes in its RegFlex program to conform to the revisions to the investment rule.

Effective October 31, 2003, NCUA amended its member business loan (MBL) regulations to provide greater flexibility to credit unions to meet the business loan needs of their members within statutory limits and appropriate safety and soundness parameters. (*See* 12 CFR 723.) Major changes included: (1) Reducing construction and development loan equity requirements; (2) allowing RegFlex credit unions to determine whether to require personal guarantees by principals; (3) allowing well-capitalized credit unions to make unsecured MBLs within certain limits; (4) providing that purchases of nonmember loans and nonmember participation interests do not count against a credit union's aggregate MBL limit, subject to an application and approval process; (5) allowing 100 percent financing on certain business purpose loans secured by vehicles; (6) providing that loans to credit unions and credit union service organizations (CUSOs) are not MBLs for purposes of the rule; and (7) simplifying MBL documentation requirements. Other provisions in the MBL regulation were simplified and unnecessary provisions were removed. At the same time, NCUA amended its PCA rule regarding the risk weighting of MBLs and its CUSO rule to permit CUSOs to originate business loans.

Effective January 29, 2004, NCUA updated and clarified the definitions of certain terms used in the loan participation rule. (*See* 12 CFR 701.22.) Specifically, the definition of ''credit union organization'' was amended to conform to the terms of the CUSO rule. Also, the definition of ''financial organization'' was broadened to provide FCUs greater flexibility in choosing appropriate loan participation partners.

Also effective January 29, 2004, NCUA amended its share insurance rules to simplify and clarify them and provide parity with the deposit insurance rules of the Federal Deposit Insurance Corporation (FDIC). (*See* 12 CFR 745.) These amendments provided continuation of coverage following the death of a member and for separate coverage after the merger of insured credit unions for limited periods of time. The amendment also clarified that the interests of nonqualifying beneficiaries of a revocable trust account are treated as the individually owned funds of the owner even where the owner has not actually opened an individual account. Finally, the amendment clarified that there is share insurance coverage for Coverdell Education Savings Accounts, formerly known as Education IRAs.

Effective March 26, 2004, NCUA revised its rules concerning maximum borrowing authority to permit federally insured, state-chartered credit unions (FISCUs) to apply for a waiver from the maximum borrowing limitation of 50 percent of paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss). (*See* 12 CFR 701 and 741.) This amendment provided FISCUs with more flexibility by allowing them to apply for a waiver up to the amount permitted under state law. In the same rulemaking, NCUA added a provision to its regulations to allow an FCU to act as surety or guarantor on behalf of its members. The final rule established certain requirements to ensure FCUs and FISCUs, if permitted under state law, acting as a surety or guarantor, are not exposed to undue risk.

Effective April 1, 2004, NCUA revised its living trust account rules to provide insurance coverage of up to $100,000 per qualifying beneficiary who, as of the date of a credit union's failure, would become entitled to the living trust assets upon the owner's death. (*See* 12 CFR 745.) The intent of this amendment was to provide for share insurance coverage for qualifying beneficial interests irrespective of defeating contingencies, an issue that had proven to be quite complex and confusing to many credit unions and their members. The amended rule also specifically allowed for separate insurance for both a life estate and a remainder interest for qualifying beneficiaries. This configuration is typically used by a husband and wife, with the survivor receiving a life estate and the remainder interest going to specified qualified beneficiaries upon the death of the survivor. NCUA determined to amend its rule to make it consistent with the FDIC's position and determined not to require a credit union to maintain records disclosing the names of living trust beneficiaries and their respective trust interests. The FDIC solicited comment specifically on this matter and concluded that to do so would be unnecessary and burdensome. The NCUA Board concurred with that judgment, recognizing that a grantor may elect to change the beneficiaries or their interests at any time before death and requiring a credit union to maintain a current record of this information is impractical and unnecessarily burdensome.

The general principles governing share insurance coverage in NCUA's regulations, however, still require that the records of the credit union disclose the basis for any claim of separate insurance (*see* 12 CFR 745.2(c)). This obligation may be met if the title of the account or other credit union records refer to a living trust. The final rule makes reference to this requirement, but specifically disclaims any requirement that the credit union's records must identify beneficiaries or disclose the amount or nature of their interest in the account. NCUA's objectives in this rule change were to simplify the rule and also to conform all types of revocable trust arrangements to similar rules on calculating insurance coverage.

Effective July 29, 2004, the NCUA amended its regulations governing an FCU's authority to act as trustee or custodian to authorize FCUs to serve as trustee or custodian for Health Savings Accounts (HSAs). (*See* 12 CFR 721 and 724.) The NCUA issued the rule as an interim final rule so FCUs and their members could take advantage of the authority granted in the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Medicare Act). The Medicare Act authorizes the establishment of HSAs by individuals who obtain a qualifying high deductible health plan and specifies that an HSA may be established and maintained at an FCU. The final rule also amended NCUA's incidental powers regulation to include trustee or custodial services for HSAs as a pre-approved activity.

Effective August 30, 2004, NCUA amended its Community Development Revolving Loan Program (CDRLP) regulation to permit student credit unions to participate in the program. (*See* 12 CFR 705.) Before this rule change, NCUA took the position that, although student credit unions are designated as low-income credit unions for purposes of receiving nonmember deposits, they did not qualify to participate in the CDRLP because they were not specifically involved in the stimulation of economic development activities and community revitalization. NCUA changed its view, recognizing the importance of student credit unions and their impact on the economic development and revitalization of the communities they serve. Student credit unions not only provide their members with valuable financial services generally not available but also a unique opportunity for financial education. NCUA acknowledged that well run student credit unions would benefit greatly from participation in the CDRLP and changed its rule. As a result, these credit unions are now better able to serve their communities.

Effective August 2, 2004, NCUA issued final revisions to its regulations regarding investment in collateralized mortgage obligations (CMOs) to authorize all FCUs and corporate credit unions to invest in exchangeable CMOs representing interests in one or more stripped mortgage backed securities (SMBS), subject to certain safety and soundness limitations. (*See* 12 CFR 703.) Before that date, NCUA regulations prohibited FCUs and certain corporate credit unions from investing in SMBS and exchangeable CMOs that represent interests in one or more SMBS. NCUA determined its concern about the safety and soundness aspects of direct SMBS investment could be reconciled for some exchangeable CMOs representing interests in one or more SMBS, which can be safe investments for credit unions. The rule also authorized FCUs and corporate credit unions to accept exchangeable CMOs as assets in a repurchase transaction or as collateral on a securities lending transaction regardless of whether the CMO contains SMBS.

Effective October 29, 2004, the NCUA Board issued final revisions to its fixed-asset rule. (*See* 12 CFR 701.36.) The fixed-asset rule governs FCU ownership of fixed assets and, among other things, limits investment in fixed assets to 5 percent of a FCU's shares and retained earnings. The amendment clarified and reorganized the requirements of the rule to make it easier to understand. The final rule also eliminates the requirement that an FCU, when calculating its investment in fixed assets, include its investments in any entity that holds fixed assets used by the FCU and established a timeframe for submission of requests for waiver of the requirement for partial occupation of premises acquired for future expansion.

Effective November 26, 2004, NCUA amended the collateral and security requirements of its MBL rule to enable credit unions to participate more fully in Small Business Administration (SBA) guaranteed loan programs. (*See* 12 CFR 723.) As noted above, in 2003, NCUA had amended its MBL rule and other rules related to business lending to enhance credit unions' ability to meet members' business loans needs. In addition to comments on those amendments, NCUA received other suggestions on how it could improve the MBL rule. Among the most significant, commenters suggested NCUA amend the MBL rule "so that it could be better aligned with lending programs offered by the Small Business Administration," such as the SBA's Basic 7(a) Loan Program.

While NCUA recognized the merits of this suggestion, NCUA could not include it in the final rulemaking because it addressed issues outside the scope of the rulemaking. The Administrative Procedure Act generally prohibits federal government agencies from adopting rules without affording the opportunity for public comment. (*See* 5 U.S.C. 553.) NCUA noted in the final rule, however, that it would review this suggestion to determine if it would be appropriate to act on it in a subsequent rulemaking. As a result of that review, NCUA issued a proposed amendment to its MBL rule in June 2004 to permit credit unions to make SBA guaranteed loans under SBA's less restrictive lending requirements instead of under the more restrictive MBL rule's lending requirements. NCUA reviewed the SBA's loan programs in which credit unions can participate and determined they provide reasonable criteria for credit union participation and compliance within the bounds of safety and soundness. Additionally, these SBA programs directed as small businesses are ideally suited to the mission of many credit unions.

NCUA noted in the proposal that it recognizes NCUA's collateral and security requirements for MBLs, including construction and development loans, are generally more restrictive than those of the SBA's guaranteed loan programs and could hamper a credit union's ability to participate fully in SBA loan programs. As a result, the MBL rule's collateral and security requirements could prevent a credit union from making a particular loan that it could otherwise make under SBA's requirements. NCUA adopted the final rule to provide relief from these more restrictive requirements and to enable credit unions to better serve their members' business loans needs.

Effective October 21, 2005, NCUA amended its rule concerning CUSOs to provide that a wholly owned CUSO need not obtain its own annual financial statement audit from a certified public accountant if it is included in the annual consolidated audit of the FCU that is its parent. (*See* 12 CFR 712.) The amendment reduced regulatory burden and conformed the regulation with agency practice, which, since 1997, had been to view credit unions with wholly owned CUSOs in compliance with the rule if the parent FCU has obtained an annual financial statement audit on a consolidated basis.

Effective January 20, 2006, NCUA revised its MBL rule to clarify the minimum capital requirements a federally insured corporate credit union (corporate) must meet to make unsecured MBLs to members that are not credit unions or corporate credit union service organizations. (*See* 12 CFR 723.) NCUA also revised the definition of a construction or development loan (C&D loan) to include certain loans to borrowers who already own or have rights to property and the definition of net worth to be more consistent with its definition in the FCU Act and NCUA's PCA regulation. Finally, the rule clarified that a state may rescind a state MBL rule without NCUA's approval.

Effective January 22, 2007, NCUA revised its rule governing the conversion of insured credit unions to mutual savings banks or mutual savings associations. The final rule improves the information available to members and the board of directors as they consider a possible conversion. The final rule includes revised disclosures, revised voting procedures, procedures to facilitate communications among members, and procedures for members to provide their comments to directors before the credit union board votes on a conversion plan.

The conversion issue has been among the most significant and important issues confronting the credit union industry. As noted in the preamble to the proposed rule, published for a 60-day comment period in June 2006, the conversion from a credit union charter to a bank charter is a fundamental shift. The decision to convert belongs to the members. To make this decision, members must be fully informed as to the reasons for the conversion and have time to consider the advantages and disadvantages of conversion. They should also have an opportunity to communicate their views to the credit union's directors and to communicate with other members about the proposed conversion.

The NCUA solicited public comment on ways to improve the conversion process in each of these areas. The final rule, adopted after consideration of all public comments, requires a converting credit union to give advance public notice that the board intends to vote on a conversion proposal and establishes procedures for members to share their views with directors before they adopt the proposal; thereafter, the rule outlines a procedure for any member to share his views about the proposal among the membership. The rule also clarifies that credit union directors may vote in favor of a conversion proposal only if they have determined the conversion is in the best interests of the members and requires the board of directors to submit a certification to the NCUA of its support for the conversion proposal and plan. The rule also simplifies the required disclosures and includes new requirements for delivery of both the disclosures and the ballots to the membership. Finally, the rule sets out procedures to govern NCUA's review and approval of a conversion request and procedures for appeal of the decision to the NCUA Board.

E. Legislative Issues

1. Financial Services Regulatory Relief Act of 2006. Congress enacted the FSRRA in October. The EGRPRA process served as an impetus to the FFIEC agencies to work together in considering legislative recommendations in connection with burden reduction objectives. The new law makes several changes to the FCU Act, including several new powers for FCUs and clarification of NCUA's enforcement authority. The provisions affecting FCU powers are summarized below.

a. Check Cashing and Money Transfer Services. The new law changes section 107(5) of the FCU Act, 12 U.S.C. 1757(5), to allow FCUs to provide check cashing and money transfer services to all persons described in the field of membership and, therefore, eligible to become members of the credit union, whether or not they have actually joined the credit union. This expansion will introduce low cost financial services to persons of low income and will provide a viable alternative for them to the frequently expensive, sometimes predatory practices to which they are often relegated. It will also allow these persons to begin to gain confidence in more traditional financial organizations, which many of them, especially recent immigrants, often lack. NCUA believes this measure is in furtherance of the credit union mission of serving persons of modest means in their field of membership.

b. Increase in Loan Maturity Limits. The new law makes a change to the FCU Act to permit the NCUA Board to establish FCU general loan maturity limits up to 15 years or longer, liberalizing the previous statutory limit of 12 years (*see* 12 U.S.C. 1757(5)). The increase, implemented through a rulemaking finalized in October, provides FCUs with the flexibility to make loans for a much wider variety of purposes, in accordance with commonly accepted market practices. This liberalization also permits FCUs to offer products and services commonly available from other financial institutions.

c. Preservation of Credit Union Net Worth in Mergers. The new law amends the FCU Act to preserve the net worth of credit unions after a merger (*see* 12 U.S.C. 1790d(o)(2)(A)). Under the new law, a continuing credit union in a merger can include pre-merger retained earnings of the merging credit union in calculating regulatory net worth. The change, which will also require a change to NCUA's PCA rules, was necessary because a proposed final rule by the Financial Accounting Standards Board (FASB) would count only the retained earnings of the continuing credit union toward net worth following a merger. The FASB proposal has the effect of artificially lowering the post-merger capital ratio for the resulting credit union. Without this change, voluntary mergers between credit unions would have been discouraged.

While the FSRRA was an important step in addressing regulatory burden, NCUA believes it is important for Congress to continue to look for ways to reduce any unnecessary regulatory burdens on credit unions. NCUA developed or supported a number of legislative burden reducing proposals that ultimately were not included in the FSRRA. Congress may find these proposals a useful starting point in considering additional regulatory relief measures in the future.

F. Conclusion

The NCUA fully supports the rationale of the EGRPRA legislation. That rationale conforms with the NCUA's own independent commitment to review its regulations periodically to assure they are effective, necessary, and not unduly burdensome.

Appendix II–A: Subject and Regulation Cite, by Category

Category	Subject	Regulation cite
1. Applications and Reporting.	Change in official or senior executive officer in credit unions that are newly chartered or in troubled condition.	12 CFR 701.14
	Field of membership/chartering	12 CFR 701.1; IRPS 03
	Fees paid by federal credit unions	12 CFR 701.6
	Conversion of insured credit unions to mutual savings banks	12 CFR 708a
	Mergers of federally insured credit unions; voluntary termination or conversion of insured status.	12 CFR 708b
	Applications for insurance	12 CFR 741.0; 741.3; 741.4; 741.6
	Conversion to a state-chartered credit union	12 CFR 741.7
	Purchase of assets and assumption of liabilities	12 CFR 741.8
2. Powers and Activities:		
a. Lending, Leasing and Borrowing.	Loans to members and lines of credit to members	12 CFR 701.21
	Participation loans	12 CFR 701.22
	Borrowed funds from natural persons	12 CFR 701.38
	Statutory lien	12 CFR 701.39
	Leasing	12 CFR 714
	Member business loans	12 CFR 723
	Maximum borrowing	12 CFR 741.2
b. Investment and Deposits.	Investment and deposit activities	12 CFR 703
	Fixed assets	12 CFR 701.36
	Credit union service organizations (CUSOs)	12 CFR 712
	Payment on shares by public units and nonmembers	12 CFR 701.32
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR 701.34
	Share, share draft, and share certificate accounts	12 CFR 701.35
	Treasury tax and loan depositories; depositories and financial agents of the government.	12 CFR 701.37
	Refund of interest	12 CFR 701.24
c. Miscellaneous Activities.	Incidental powers	12 CFR 721
	Charitable contributions and donations	12 CFR 701.25
	Credit union service contracts	12 CFR 701.26
	Purchase, sale, and pledge of eligible obligations	12 CFR 701.23
3. Agency Programs	Community Development Revolving Loan Program	12 CFR 705
	Central liquidity facility	12 CFR 725
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR 701.34
	Regulatory Flexibility Program	12 CFR 742
4. Capital	Prompt corrective action	12 CFR 702
	Adequacy of reserves	12 CFR 741.3(a)
5. Consumer Protection	Nondiscrimination requirement (Fair Housing)	12 CFR 701.31
	Truth in Savings (TIS)	12 CFR 707
	Loans in areas having special flood hazards	12 CFR 760
	Privacy of consumer financial information	12 CFR 716
	Share insurance	12 CFR 745
	Advertising	12 CFR 740
	Disclosure of share insurance	12 CFR 741.10
	Notice of termination of excess insurance coverage	12 CFR 741.5
	Uninsured membership share	12 CFR 741.9
6. Corporate Credit Unions	Corporate credit unions	12 CFR 704
7. Directors, Officers, and Employees.	Loans and lines of credit to officials	12 CFR 701.21(d)
	Reimbursement, insurance, and indemnification of officials and employees.	12 CFR 701.33
	Retirement benefits for employees	12 CFR 701.19
	Management officials interlock	12 CFR 711
	Fidelity bond and insurance coverage	12 CFR 713
8. Money Laundering	Report of crimes or suspected crimes	12 CFR 748.1(c)
	Bank Secrecy Act	12 CFR 748.2
9. Rules of Procedure	Liquidation (involuntary and voluntary)	12 CFR 709 and 710
	Uniform rules of practice and procedure	12 CFR 747 subpart A
	Local rules of practice and procedure	12 CFR 747, subpart B
10. Safety and Soundness	Lending	12 CFR 701.21
	Investments	12 CFR 703
	Supervisory committee audit	12 CFR 715
	Security programs	12 CFR 748
	Guidelines for safeguarding member information	12 CFR 748, Appendix A
	Records preservation program and record retention appendix	12 CFR 749

Category	Subject	Regulation cite
	Appraisals	12 CFR 722
	Examination	12 CFR 741.1
	Regulations codified elsewhere in NCUA's regulations as applying to federal credit unions that also apply to federally insured state-chartered credit unions.	12 CFR 741, subpart B

Appendix II–B: Summary of Comments, by Category

I. Applications and Reporting (68 FR 35589, June 16, 2003)

A. Field of Membership and Chartering Section 701.1; IRPS 03–1

Seven commenters commented on field of membership (FOM) and chartering. The commenters were generally pleased with the direction NCUA has taken with chartering; however, six commenters encouraged NCUA to do even more in this area. One commenter cautioned NCUA to chart a prudent course in this area and carefully consider the effects of granting larger FOMs to FCUs with low penetration in their existing FOMs.

The statutory changes suggested by some of the commenters were:

• Remove the ''reasonable proximity'' requirement in section 1759(f)(1)(B) of the FCU Act. Requiring a physical presence does not make sense in this century of Internet and remote banking.

• Remove the preference in the Credit Union Membership Access Act (CUMAA) for forming new groups over adding a group to an existing credit union. A few commenters suggested eliminating the presumption in CUMAA that a group over 3,000 may be able to form its own credit union, requiring a special analysis and consideration.

• Clarify that the limitation of 3,000 does not apply to voluntary mergers of healthy FCUs.

• Eliminate the undefined local community test.

• Allow FCUs to continue to serve SEGs after the FCU converts to a community charter. Numerous FCUs have converted to state charter because of this limitation.

• Leave it to each FCU as to how to define ''family'' and ''household.''

• State that commercial banks and thrifts have no standing to challenge NCUA FOM policies that implement the FCU Act.

• Allow FCUs to provide check cashing and money transfer services to nonmembers.

The regulatory changes suggested to IRPS 03–1 were:

• The IRPS permits an FCU to add a select group if it is in ''reasonable proximity'' to a wholly owned ATM or a service facility in which it has some ownership interest. Several commenters suggested deleting the ''wholly owned'' requirement for ATMs and the ownership requirement for a service facility. The commenters noted that the wholly owned requirement penalizes smaller credit unions and hurts credit unions that have joined an ATM network in the spirit of cooperation.

• Eliminate the geographic limitation on occupational common bond based on employment in a trade, industry, or profession (TIP). It is not required in the FCU Act, and any safety and soundness concerns can be addressed in the business plan.

• TIP should not be limited to single common bond credit unions.

• Eliminate the requirement that a credit union expanding to add a group must include with its application certain documentation from the group. The credit union should be allowed to provide all the necessary information. Most groups do not have the time or the expertise to provide the information NCUA requires. NCUA should allow an FCU to provide and attest to the information that is currently required in the group's documentation.

• Remove the restrictions on voluntary mergers. The legislative history and recent court decisions support the interpretation that the limitations on the expansion of multiple common bond credit unions do not apply to voluntary mergers.

B. Fees Paid by Federal Credit Unions Section 701.6

Five commenters commented on this provision of the regulations. One commenter supported NCUA's efforts to decrease costs and urged NCUA to continue this effort. Four commenters noted that the overhead transfer rate (OTR) is directly related to the operating fee and urge more transparency in the process. Some of the suggestions in conjunction with greater transparency were that NCUA: Make certain it is basing its calculations on accurate information; place the procedures for calculating the OTR in the regulations; and release the OTR analysis to the credit union community 60 days prior to setting a new OTR. One commenter commended NCUA on its efforts to accurately calculate the OTR.

C. Applications for Insurance Sections 741.0; 741.3; 741.4; 741.6

One commenter commented on these provisions. The commenter suggested NCUA digitize the insurance application (a digital package of electronic forms). The commenter made the following suggestions for the Form 5300 Call Report: (1) Make filing as easy as possible (electronic filing with edit checks); (2) minimize the changes to the Call Report, because this is unduly burdensome to small credit unions; and (3) improve the instructions.

D. Change in Officials Section 701.14

Two commenters commented on this provision. One commenter stated the regulation is overly burdensome and invasive and suggested NCUA review and simplify it. The other commenter suggested shortening the timeframe for the region to determine if the application is complete from 10 to 5 days and shortening the region's 30-day timeframe to approve or disapprove an application. The commenter believes newly chartered and troubled credit unions should be a high priority, and that any delay in the process could derail the success of the credit union.

E. Conversion of Insured Credit Union to Mutual Savings Bank Part 708a

Four commenters commented on this provision. The commenters supported NCUA's proposed changes to this provision. The proposal is intended to ensure more accurate disclosure by requiring credit unions to provide the members with specific information so that they have sufficient knowledge to make an informed decision. The commenters also suggested amending the statute so that NCUA can require a higher percentage for approval than a majority of those voting (*see* 12 U.S.C. 1785(b)(2)(B)). The commenters do not believe it is right that a small number of members could decide the fate of the credit union. The suggestions were to require that a majority of all members vote in favor of the conversion or that a minimum of 20 percent of the members vote and that a majority of those members vote in favor of the conversion. (This is the requirement for conversion to private insurance.)

F. Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status Part 708b

Three commenters commented on this process. One commenter suggested amending the voting requirements in section 708b.203(c), which covers the conversion from federal to private insurance, from a majority of the members that vote, provided 20 percent vote, to requiring a majority of all members, as is required for termination of insurance in section 708b.201(c). This would require an amendment to section 1785(d)(2) of the FCU Act.

One commenter suggested allowing credit unions converting from state to federal charter to retain investments authorized under state law but not authorized under federal law for a reasonable period of time instead of requiring immediate divestiture.

One commenter asked NCUA not to follow expected guidance from FASB on the issue of merging credit unions. The guidance is expected to require the acquiring credit union in a merger of two or more credit unions to treat the merger as a purchase rather than a pooling of interests.

G. Conversion to State Chartered Credit Union Section 741.7

One commenter commented on this provision. The commenter suggested that when an FCU converts to state charter it should not be required to submit a new request for insurance and go through the insurance review process.

II. Powers and Activities

A. Lending, Leasing, and Borrowing

1. Loans to Members and Lines of Credit to Members Section 701.21. Five commenters commented on this provision. Three commenters suggested amending the FCU Act to give NCUA more latitude in adjusting the interest rate. One commenter suggested simplifying section 701.21(c)(7), the regulatory provision governing interest rates, by reducing it to one paragraph and stating the current rate, effective as of a date certain and explaining that the rate is periodically revised by NCUA.

Two commenters suggested revising the FCU Act by either eliminating the statutory 12-year loan limitation or increasing it to 15 years (*see* 12 U.S.C. 1757(5)).

One commenter suggested increasing the 20-year limitation on mobile home loans and home equity loans (*see* 12 CFR 701.21(f)).

Two commenters suggested amending the FCU Act to eliminate the requirement for board approval for loans to officials over $20,000 and instead allow the board to set the limit or, at a minimum, raise the amount (*see* 12 U.S.C. 1757(5)(A)(5)).

One commenter suggested that NCUA review its regulatory preemption provisions to ensure that they are consistent with the current case law.

One commenter suggested moving the overdraft policy rules from the lending section of the regulations to the share section. The commenter is concerned that by including them in the lending provision this may lend support to the position that overdraft policies fall within Regulation Z.

One commenter suggested clarifying in the regulations that the board may delegate the setting of loan rates and terms to credit union management.

One commenter suggested eliminating the provision in section 701.21(g) that states that ‘‘no loan shall be secured by a residence located outside the United States, its territories and possessions, or the Commonwealth of Puerto Rico.’’ Credit unions serve facilities that have locations throughout the world. Because of this provision an FCU cannot assist a member trying to buy a home in a foreign country.

2. Loan Participation Section 701.22. One commenter commented on this section. The commenter suggested revising section 701.22(d)(4) by removing the requirement that an FCU that is not the originating lender get the approval of the board of directors or investment committee prior to disbursement. The commenter believes that the rule should allow the board to delegate this authority to senior management with the board setting the parameters. The commenter also suggests removing the requirement in section 701.22(c)(2) that the originating lender retain 10 percent of the face amount of the loan. The commenter notes that other types of financial institutions do not have this limitation. This is a statutory requirement and would require an amendment to the FCU Act (*see* 12 U.S.C. 1757(5)(E)).

3. Share, Share Draft, and Share Certificate Accounts Section 701.35. Two commenters commented on this provision. One commenter suggested NCUA pursue a statutory change to permit credit unions to accept deposits as well as shares. One commenter suggested a legislative change to delete from the FCU Act the requirement that ‘‘[i]f the par value of a share exceeds $5, dividends shall be paid on all funds in the regular share account once a full share has been purchased.’’ (*See* 12 U.S.C. 1763.)

4. Member Business Loans Part 723. Five commenters commented on this provision, and all five suggested raising the statutory exemption from $50,000 to $100,000 with one recommending deleting it in its entirety (*see* 12 U.S.C. 1757a(c)(B)(iii)). The commenters believe this amendment is necessary for credit unions to provide better service to their members. Two commenters suggested eliminating or revising the statutory restriction limiting a credit union's business lending to the lesser of either 1.75 times net worth or 12.25 percent of total assets (*see* 12 U.S.C. 1757a(a)). The commenters note that credit unions' business lending has no effect on the profitability of other insured institutions and is filling a niche for business loans of modest amounts. They suggest that, at a minimum, the amount should be raised to the amount permitted for thrifts.

Two commenters supported targeted statutory relief, such as for agricultural and faith-based loans.

One commenter suggested additional relief in section 701.21 for residential mortgage lending when the borrowing is basically for personal investment rather than for true business enterprise purposes. This commenter also suggested: Better aligning the MBL regulatory requirements with SBA's loan requirements; and providing additional flexibility with respect to the regulatory loan-to-value limitation for MBLs.

5. Maximum Borrowing Section 741.2. Two commenters commented on this provision. One commenter noted that NCUA has a proposed rule out for comment removing the borrowing limitation of 50 percent of paid-in and unimpaired capital and surplus for federally insured state-chartered credit unions. The commenter noted the limitation is statutory for FCUs and that the commenter would restrict its comments on this issue to the proposed rule. The other commenter suggested allowing all RegFlex credit unions to exceed the limitation or remove it for all credit unions. This suggestion would require an amendment to section 1757(9) of the FCU Act.

6. Leasing Part 714. One commenter commented on this section. The commenter suggested that NCUA amend the rule by eliminating the 25 percent residual value requirement in section 714.4(c). The commenter believes credit unions should have the ability to make an informed business decision as to what the residual value should be for each lease.

B. Investment and Deposits

1. Designation of Low-Income Status; Receipt of Secondary Capital Accounts by Low-Income Designated Credit

Unions Section 701.34. Four commenters commented on this provision. Two commenters suggested eliminating the 20 percent of total shares limit on nonmember deposits in low-income credit unions. These commenters noted that the limit restricts philanthropic and corporate investment and that prompt corrective action (PCA) already addresses the safety and soundness concerns this limitation is addressing. One commenter suggested eliminating the requirement in section 701.34(b)(3) that a secondary capital account have a minimum maturity of five years. The commenter believes this is overly restrictive.

One commenter stated its support for secondary capital and encouraged NCUA to allow the use of secondary capital in all credit unions.

2. Fixed Assets Section 701.36. Three commenters commented on this provision. Two commenters suggested reviewing section 701.36(d), which requires an FCU that purchases property for expansion to have a plan to utilize the property for its own operation. The commenters believe this requirement unnecessarily limits an FCU's future expansion options. The commenters suggested three years is not a reasonable time to require full utilization and suggested deleting it and conditioning the purchase of the property on an ongoing relationship with the sponsor or other entity willing to provide long-term leases.

One commenter objected to the 5 percent of shares and retained earnings limitation on the purchase of fixed assets in section 701.36(c). The commenter believes this is too limiting and that the definition of fixed assets should be modified to only include land and buildings. In addition, the commenter suggested that for FCUs applying for a waiver from the 5 percent limitation that NCUA not require copies of blueprints. This is not a regulatory requirement but may be required by some regions. The commenter believes the waiver process should be simplified.

3. Investment and Deposit Activity Part 703. Three commenters commented on this provision. The commenters identified the following restricted activities as areas for relief: Asset-backed securities, short-term corporate commercial paper, corporate notes and bonds, non-agency mortgage-backed securities, shares and stocks of other financial institutions, derivative authority in order to hedge interest rate risk, utilization of financial futures or interest rate risk, securities related to small businesses, residual interest in CMOs/REMICs, mortgage servicing rights, and real estate investment trusts. One commenter suggested allowing FCUs that have the expertise to engage in these activities to do so instead of limiting expanded investment options to RegFlex credit unions.

One commenter suggested exempting all FCUs and not just RegFlex FCUs from the 100 percent limitation in section 703.5(b)(ii). This provision permits an FCU to delegate discretionary control over the purchase and sale of its investments to a person other than a credit union employee up to 100 percent of its net worth. This commenter also suggested lifting the prohibition on the purchase of an investment with the proceeds from a borrowing transaction if the purchased investment matures after the maturity of the borrowing repurchase transaction. This provision does not apply to RegFlex credit unions.

One commenter supported legislation that would increase the investment options for FCUs so that they have the same authority that is approved for other federally regulated financial institutions. This commenter also supported exempting FCUs from registering with the Securities and Exchange Commission as broker/dealers when engaging in certain activities. Banks are already exempt from this requirement.

4. Credit Union Service Organization Part 712. Three commenters commented on this provision. Two of the commenters supported a statutory change to remove the 1 percent limitation on investments and loans to credit union service organizations (CUSOs) or, at a minimum, increase it to 3 percent or 5 percent.

Two commenters suggested that, although the list of permissible activities in the current regulation is broader than prior versions of the rule, NCUA should go even further. The commenters suggested the rule include guidance as to which activities are related to the routine activities of an FCU and allow FCUs to determine if the activity is permissible. The specific examples currently in the rule should be included as an appendix to the rule and for guidance purposes only.

C. Miscellaneous Activities

1. Incidental Powers Part 721. Two commenters commented on this provision. One commenter supported legislation to permit FCUs to operate full trust departments. The other commenter suggested expanding section 721.3(d) to permit FCUs to lease excess space regardless of whether it intends to eventually occupy space. This restriction prevents FCUs from being competitive with banks.

2. Charitable Contributions Section 701.25. Three commenters commented on this provision. One commenter suggested eliminating the rule in its entirety because this activity does not pose a safety and soundness concern. Two commenters suggested eliminating the requirement in section 701.25(b) that a not-for-profit recipient that is not a 501(c)(3) be located in or conduct activities in the community in which the credit union has a place of business. The commenters suggested allowing the FCU to select the recipient based on location of members.

3. Purchase, Sale and Pledge of Eligible Obligations Section 701.23. One commenter commented on this provision and suggested a statutory change to remove the limitation of 5 percent of unimpaired surplus and capital limitation on the purchase of eligible obligations (*see* 12 U.S.C. 1757(13)).

4. FCU Bylaws. Two commenters suggested that NCUA include the FCU Bylaws in its EGRPRA review. One of those commenters also noted that, by including some of the standard bylaw amendments in the revised 1998 FCU Bylaws (FCU Bylaws) and requiring NCUA approval to adopt those not included in the FCU Bylaws, NCUA had reduced regulatory flexibility. It should be noted that as part of its 2004 regulatory review NCUA is seeking comment on the FCU Bylaws.

III. Agency Programs Parts 705, 725, and 742; Section 701.34 (70 FR 75986, December 22, 2005)

One commenter suggested reducing NCUA's requirement that a credit union have 7 percent capital for six consecutive quarters to be eligible for participation in the agency's RegFlex program. This commenter urged the agency to continue to look for ways, consistent with safety and soundness considerations, to reduce the regulatory burden for community development and low-income credit unions. One commenter recommended NCUA adopt the approach followed by the Department of the Treasury's CDFI Fund for designating median incomes in geographic areas for NCUA's program of designating low-income credit unions. The commenter noted that NCUA follows this convention in designating ''underserved areas.'' This commenter also opposed recent changes by NCUA to the secondary capital rules, such as the requirement to obtain the Regional Director's approval before accepting an investment of secondary capital. This commenter offered several comments on aspects of the NCUA's revolving loan program rule, including eliminating some unnecessary provisions, improving the administration of other provisions, and either eliminating the community needs plan outright or making it subject to public review. The commenter recommended NCUA consider changing the loan program into a secondary capital program and eliminating as unnecessary and burdensome compliance with our non-member public unit share account rules once the loan to NCUA is repaid.

IV. Capital Part 702; Section 741.3 (70 FR 75986, December 22, 2005)

Seven of the eight commenters expressed strong support for a risk-based capital approach and advocated that NCUA continue to pursue necessary changes to the FCU Act to enable it to fully implement such a program. Six of these also advocated implementation of a risk-based capital program for corporate credit unions as well, and urged NCUA to continue its ongoing dialogue with the industry on this topic. One commenter noted that corporations have relatively more conservative investments and less risky loan portfolios, which supports the argument that a risk-based approach to capital is appropriate. One commenter noted that credit unions are unique among regulated financial institutions in their absence of a risk-based capital regime. In respect of the prompt corrective action rules, one commenter recommended that NCUA not require a credit union meeting the ''adequately capitalized'' test to undertake corrective action; another suggested that corrective action not be required where the credit union's capital ratio falls between 4 percent and 5 percent. One commenter noted that implementation of a risk-based net worth program could be complicated and expensive for smaller credit unions. Another commenter noted its support for the current accounting treatment allowed for a credit union's investment in the NCUSIF.

V. Consumer Protection

A. Lending-Related Rules (69 FR 5300, February 4, 2004)

Note: Includes certain Federal Reserve Board (FRB) rules that affect credit unions. Commenters did not offer suggestions on any rule developed or issued by NCUA, although one commenter suggested that the Federal Credit Union Act should be amended by eliminating or modifying the usury ceiling contained in section 107 of the Act.

1. Regulation Z, Truth in Lending 12 CFR 226 (FRB). Two commenters suggested amending Regulation Z to require that the costs associated with accepting a below-market financing offer, such as foregoing an available rebate or price reduction, be included in the finance charge and calculation of the annual percentage rate (APR). Two commenters suggested revising Regulation Z's requirement that debt cancellation fees may only be excluded from APR where the applicant has asked for the debt cancellation product in writing. The commenters characterized this requirement as unduly burdensome and asked that it be amended. They noted that many applicants seek credit through telephonic or electronic means, and that requiring a written request for a debt cancellation product is time-consuming and unnecessary. Two commenters requested that Regulation Z be amended to exclude cash advance fees from APR, noting these fees are typically assessed on a one-time basis, which they consider to be inconsistent with the purpose of disclosing APR. Two commenters requested that fees assessed as part of an overdraft protection program be excluded from APR. One commenter recommended that the three-day right of rescission available to applicants seeking a home equity loan or a mortgage refinance be eliminated. The commenter characterized the provision as unnecessary and rarely used. One commenter recommended that Regulation Z be amended to permit use of a consolidated APR disclosure where rates for cash advance, purchase, and balance transfer are the same. One commenter asked that the Federal Reserve provide clearer guidance on Regulation Z's disclosure requirements where a risk-based credit card program is offered.

Two commenters recommended amending the Truth in Lending Act to eliminate the required use of APR. These commenters suggested that use of APR has become counterproductive and confusing to consumers, who do not understand what costs comprise APR or why there is a difference between their note rate and the APR. One noted that several of the cost components in APR are not imposed or controlled by the lender. One stated that most consumers no longer use APR for comparison purposes, and also that the costs of calculating APR exceed any benefit from its use. Both commenters believe consumers would be better served with a more simplified disclosure of the interest rate and an itemization of costs and discount points assessed by the lender.

2. Regulation C, Home Mortgage Disclosure 12 CFR 203 (FRB). Three commenters objected to recent amendments to Regulation C adopted by the Federal Reserve requiring lenders to pursue questioning related to race when they receive applications electronically or via the telephone. These commenters stated that lenders who receive these types of applications are typically unaware of the applicant's race. They suggested that pursuit of such information by the lender is both unnecessary and possibly counterproductive, instilling doubt in the mind of the applicant as to the integrity of the process. One commenter cautioned that the Federal Reserve should avoid exalting the pursuit of data over the regulation's basic purpose, which is to discourage unlawful discrimination. Two commenters pointed out that the Federal Reserve's recent determination to change Hispanic to an ethnic rather than a racial category could be counterproductive, since ethnicity is not a protected class under the fair lending rules. One commenter suggested that the Federal Reserve should raise the threshold for reporting obligations under Regulation C to include only those lenders who originate at least $25 million in mortgage loans annually. This change would place depository institution lenders on the same footing as non-depository lenders. One commenter opposed the Federal Reserve's recent amendment to this rule expanding the definition of home loan to include any loan in which some amount of the proceeds is earmarked for home improvement. The commenter believes this change makes the scope of the rule too broad and more difficult to monitor for compliance purposes.

3. Regulation B, Equal Credit Opportunity 12 CFR Part 202 (FRB). All four commenters objected to the Federal Reserve's recent amendments to Regulation B imposing new standards for determining if an application for credit has been made jointly. The commenters believe these new standards, which preclude a lender from relying on either a joint financial statement or joint signatures on the promissory note as evidence of intent to jointly apply for an extension of credit, unduly increase the compliance burden and will result in delays. One commenter noted that use of the new standards is particularly difficult with telephonic or electronic credit applications.

4. Flood Insurance Part 760. Two commenters complained that the federal statute that authorizes funding for flood insurance needs annual congressional appropriation. The commenters are concerned that the appropriation

process results in needless uncertainty about whether the required funds will be available. The commenters suggested that the enabling legislation be amended to provide for an automatic appropriation.

5. Federal Credit Union Act; Usury Ceiling. One commenter called for an amendment to section 107 of the Federal Credit Union Act to eliminate the 15 percent annual interest rate ceiling. The commenter noted that the FCU Act provides the NCUA Board with authority to establish a different usury ceiling under certain circumstances for periods not in excess of 18 months. The commenter stated that the possibility of change every 18 months creates uncertainty hindering the development of new loan products. The commenter believes the NCUA Board has ample authority to regulate against interest rate risk and suggested that the statutory usury ceiling has become unnecessary and arguably excessive.

6. Guidance on Electronic Disclosures. One commenter asked that the Federal Reserve provide guidance to the financial sector about the use of electronic disclosures under its lending regulations, as well as its electronic funds transfer and truth in savings regulations. The commenter stated that greater flexibility is necessary concerning what constitutes an ''electronic address'' and that clarification is necessary about how a consumer may evidence his or her consent to accept disclosures electronically.

B. Share Account—Deposit Relationships and Miscellaneous Consumer Regulations (69 FR 41202, July 8, 2004)

Note: Includes FRB rules governing Electronic Fund Transfers (Regulation E).

1. Truth in Savings Part 707. Two commenters suggested amending the Truth in Savings rule to eliminate the requirement that annual percentage yield on savings accounts be calculated and disclosed periodically, citing confusion that results on the part of consumers from this calculation. Two commenters also suggested that the rule be amended to eliminate the cumulative reporting of fees, as is presently required. One commenter suggested updating the dollar amount for determining if a bonus is permissible from $10 to $25, along with eliminating the required aggregation of *de minimis* items. Other suggestions to improve this rule included conforming the change in terms notice requirement to the 21 days that is required in Regulation E, as well as permitting the use of the acronym ''APY'' for annual percentage yield, similar to that which is permitted in Regulation Z for annual percentage rate. A commenter suggested modifying the requirement in the rule pertaining to advance disclosures in the case of non-check transactions, citing the difficulty in doing so with present technology. Two commenters suggested allowing notices to be delivered electronically through the home banking interface, rather than through e-mail, given the better security available in such programs. One commenter noted that this is a preferable approach in other consumer disclosures as well, such as Regulations Z, E, and M. Finally, one commenter supported the continued use of this rule as the principal avenue for regulation of bounce protection programs.

2. Privacy Part 716. Two commenters noted opposition to the requirement of annual consumer privacy notices where there has been no change in privacy policy and no right of opt-out. One commenter acknowledged this is a statutory requirement and sought NCUA's support for a change in the law. This commenter also stated there was no need to change the form of privacy notices, especially where a short form with no opt out is used. Three commenters indicated that any change to the privacy notices ought to await completion of rule changes required by the Fair and Accurate Credit Transactions Act (FACT Act), which was enacted last year and amends the Fair Credit Reporting Act. One commenter suggested NCUA should amend the definition of affiliate to include a company that may be owned or controlled by more than one credit union.

3. Electronic Funds Transfers 12 CFR Part 205 (FRB). Two commenters opposed any change from current requirements relating to debit card transactions, and indicated that technological difficulties exist with providing fee information in connection with point of sale debit card transactions. One commenter also noted opposition to any requirement that transaction fees on ATM or POS transactions be disclosed on a year-to-date, cumulative basis on periodic account statements.

4. Share Insurance Part 745. One commenter approved of the use of examples of share insurance coverage in the appendix to the share insurance regulation and asked that two additional examples, relating to insurance coverage for joint revocable trusts, be added. One commenter suggested that NCUA include the examples as part of official staff commentary, subject to notice and public comment. The commenter also recommended that NCUA include staff interpretations in the official commentary, as an alternative to the use of private legal opinion letters.[69]

VI. Corporate Credit Unions (70 FR 75986, December 22, 2005)

A. Corporate Credit Unions Part 704

Commenters addressed several other aspects of the corporate rule and related matters. One commenter requested different treatment for corporations for Bank Secrecy Act compliance and anti-money laundering rules because of corporates' lower risk profile. One commenter advocated more flexibility for corporates' investments, such as permitting derivatives indexed to inflation, to allow beneficial hedging opportunities. This commenter also advocated narrowing the scope of the corporate CUSO rule so the rule only applies to CUSOs in which a corporate has a controlling interest. This commenter opposed the loan limits applicable to corporate lending to CUSOs and suggested NCUA make loans to CUSOs subject to the same or comparable rules as member loans. This commenter stated the requirement that a corporate obtain a legal opinion addressing the issue of corporate separateness is burdensome and unnecessary in view of the actual risks. This commenter also asserted part B Expanded Authority, part V, is unduly burdensome when applied to wholesale corporates, because it restricts loan participation authority to loans made by members and natural person credit unions cannot be members of wholesale corporates.

Two commenters requested NCUA change the provisions of section 704.2 to enable corporates to settle ACH transactions on the settlement date, not the advice date. One commenter requested NCUA remove the restriction in section 704.14(a)(2), contending it unnecessarily restricts corporates from considering the full range of potential directors. This commenter also advocated that NCUA allow CUSOs to engage in the full range of permissible lending available to credit unions and allow corporates to deal in CUSO loans in the same manner as credit union loans. This commenter advocated greater flexibility in the loans to one borrower limits, especially for corporates holding expanded authorities. This commenter also indicated the requirement in section 704.12(a)(1), pertaining to providing

[69] The appendix to part 745 is published for comment as part of the rulemaking process and includes both example and interpretations.

services to nonmembers only through a correspondent agreement, is overly burdensome and reduces competition and so should be eliminated. Finally, this commenter recommended NCUA prepare guidance on corporate mergers because they are likely to continue for the foreseeable future.

VII. Directors, Officers, and Employees (70 FR 39202, July 7, 2005)

A. Parts 711 and 713; Sections 701.21, 701.33, and 701.19

1. Officers, Directors, and Employees. Two commenters wrote in support of a provision currently in both the Credit Union Regulatory Improvements and the Regulatory Relief bills pending in Congress that would allow a credit union to reimburse a volunteer for wages lost due to time spent in service to the credit union. Two commenters recommended that NCUA amend section 701.21, the general lending rule, to specify that a credit union employee who is also a member of its board of directors can receive any discounts, for example in interest rates, that the credit union makes available to other employees.

Two commenters that had previously submitted comments on the proposed amendments to part 713 reiterated their comments here. Each suggested that NCUA expand its eligibility criteria for the higher deductible beyond credit unions that qualify under NCUA's RegFlex program and allow well capitalized credit unions to qualify under the rule. One reiterated its support for the proposed changes to the coverage limits in the rule. The other reiterated its request that NCUA add a waiver procedure to enable credit unions needing a longer time period to procure a bond with different coverage as required by the rule. This same commenter asked that we also include an exemption procedure for credit unions to avoid having to meet the new coverage limits. A third commenter suggested that NCUA clarify the distinction between references to a credit union's board of directors and the NCUA Board.

One commenter requested that NCUA broaden the provisions in section 701.19(c) to allow greater discretion and flexibility in making investments to support employee benefit plans.

VIII. Anti-Money Laundering (70 FR 5946, February 4, 2005)

A. Anti-Money Laundering Part 748

Five commenters sought guidance and clarification from NCUA concerning requirements to file SARs; one sought an outright exemption from the filing requirements for small credit unions. Three commenters recommended raising the threshold for filing Currency Transaction Reports from the current $10,000 trigger; one sought an expansion of the time in which filing is required to 30 days. One commenter recommended raising the thresholds for reporting on monetary instruments from the current $3,000 trigger and for filing money laundering SARs from its current reporting threshold of $5,000. This commenter also advocated establishing a *de minimis* threshold for reporting insider theft and abuse, as well as eliminating the annual recertification requirements for exempt customers. Two commenters sought training and guidance from NCUA, in concert with the other banking regulators, on what constitutes an adequate anti-money laundering program and what requirements apply in testing and auditing of these programs. Two commenters recommended that the Office of Foreign Assets Control be merged with FinCEN under the auspices of the Department of the Treasury.

IX. Rules of Practice and Procedure (70 FR 39202, July 7, 2005)

A. Parts 709, 710, 747

1. Rules of Practice and Procedure. No commenters addressed any aspect of the rules of practice and procedure.

X. Safety and Soundness (70 FR 39202, July 7, 2005)

A. Safety and Soundness Parts 703, 715, 722, 741, 748, 749; Section 701.21

Four commenters suggested amending the Federal Credit Union Act to provide NCUA with greater flexibility in establishing maximum rates and maturities on loans. One commenter suggested liberalizing the requirements in the lending rules governing approval for loans to insiders. Although the MBL rule was not specifically included in this notice, two commenters recommended changes to it, including expanding the permissible maturity limits and allowing individual boards of directors to make some of the decisions that currently require NCUA waiver or specific approval. One commenter suggested expanding the privileges available to RegFlex credit unions in the MBL context to all adequately capitalized credit unions. The same commenter suggested raising the threshold for the mandatory use of appraisals above its current statutory limit of $250,000 for real estate loans.

Three commenters addressed the investments rule. One recommended eliminating restrictions on purchasing steeply discounted CMOs, and another suggested extending the investment privileges available to RegFlex credit unions to all adequately capitalized credit unions. The third commenter suggested amending the investment regulation to require closer monitoring and reporting of investments that fall outside of the board's investment policy.

One commenter requested that the NCUA permit smaller credit unions to file the 5300 Call Report on a semiannual or annual basis, rather than a quarterly basis. Four commenters sought clarification and liberalization of our recordkeeping rule, including guidance on what constitutes a vital record and clarification about the time period after which records that pertain to a merged credit union may be destroyed by the continuing credit union.

B. Impact of NCUA Rules on Federally Insured Credit Unions Part 741

One commenter sought clarification on the extent to which NCUA's rules apply to state-chartered, federally insured credit unions. This commenter opposed NCUA's current method, as reflected in 12 CFR 741, that notes those rules that apply to federally insured state credit unions. The commenter believes this approach leads to confusion and uncertainty, especially when a rule may not apply in its entirety to a state credit union. The commenter recommends NCUA should restate explicitly which of the rules outside of part 741 apply to these credit unions, even if this results in some redundancy in the rules.

C. Miscellaneous

Two commenters addressed documents recently published by NCUA that provide guidance to credit unions. The guidance documents, dealing with overdraft protection programs and incident response programs in cases involving breach of security, are intended to assist credit unions to comply applicable regulatory and statutory requirements but do not have the force or effect of regulations. One commenter suggested that the bounce program guidance was incorrect in calling for overdrafts to be reported as loans, and also questioned the recommendation in the guidance concerning notice to consumers about the availability of overdraft protection in non-checking account transactions such as debit card or ATM use. The other commenter, addressing the security program guidance, recommended that NCUA clarify the steps a credit union should take in monitoring an account that has been the subject of a security breach.

Although not discussed in an EGRRPA notice, one commenter offered specific suggestions in support of several items included in the regulatory relief bills currently pending, including support for raising the CUSO investment authority from 1 percent to 3 percent of assets, or higher as determined by the credit union's level of capital adequacy. The commenter also supports allowing a continuing credit union in a merger to include the retained earnings of the merging credit union in calculating and reporting its net worth, as well as permitting credit unions to cash checks and provide wire transfer services to anyone within the field of membership. Finally, the commenter supports allowing a converting credit union to continue to serve members of a select employee group post-conversion and providing NCUA with greater flexibility in adjusting the FCU usury ceiling.

XI. Total Comments Received, by Type

In response to its 6 published notices soliciting comment on its 10 categories of rules, NCUA received a total of 41 comments. Of these, 17 were generated by national trade associations, 13 by natural person credit unions, 6 by state credit union leagues, 3 by corporate credit unions, and 2 by individuals.

End of text of the Joint Report to Congress, July 31, 2007, Economic Growth and Regulatory Paperwork Reduction Act

Tamara J. Wiseman,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 07–5385 Filed 10–31–07; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 7535–01–P

Reader Aids

Federal Register

Vol. 72, No. 211

Thursday, November 1, 2007

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**

Presidential Documents

Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**

Other Services

Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, NOVEMBER

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT NOVEMBER 1, 2007

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Potato cyst nematode; published 9-12-07

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic bluefin tuna; published 10-31-07

COMMERCE DEPARTMENT
Patent and Trademark Office
Patent cases:
Continuing applications; continued examination filings, applications containing patentably indistinct claims, and claims examinations; published 8-21-07

DEFENSE DEPARTMENT
Non-Federal entities authorized to operate on DoD installations; support standardization; published 10-2-07

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Indiana; withdrawn; published 11-1-07

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Louisiana; published 8-17-07
North Carolina; published 10-2-07
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Nawiliwili Harbor, Kauai, HI; published 10-31-07

HOMELAND SECURITY DEPARTMENT
U.S. Citizenship and Immigration Services
Immigration:
H and L adjustment applicants returning from trip outside U.S.; receipt requirement removed; published 11-1-07

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgage and loan insurance programs:
Single family mortgage insurance—
Defaulted mortgages; revisions; published 10-2-07

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright office and procedures:
Copyright claims, registration; renewals; published 11-1-07

PENSION BENEFIT GUARANTY CORPORATION
Single-employer plans:
Allocation of assets—
Benefits payable in terminated plans; interest assumptions for valuing and paying benefits; published 10-15-07

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Stemme GmbH & Co. KG; published 10-12-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Dates (domestic) produced or packed in California; comments due by 11-6-07; published 9-7-07 [FR 07-04368]
Pistachios grown in California; comments due by 11-6-07; published 9-7-07 [FR 07-04370]

AGRICULTURE DEPARTMENT
Import quota and fees:
Dairy Import Licensing Program; comments due by 11-5-07; published 10-4-07 [FR 07-04780]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Groundfish; comments due by 11-6-07; published 10-25-07 [FR 07-05292]
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 11-5-07; published 10-4-07 [FR 07-04917]

DEFENSE DEPARTMENT
Defense Acquisition Regulations System
Acquisition regulations:
Contractors and subcontractors using members of selected reserve; evaluation factor; comments due by 11-5-07; published 9-6-07 [FR E7-17424]
Security-guard functions; comments due by 11-5-07; published 9-6-07 [FR E7-17436]
Technical data rights; comments due by 11-5-07; published 9-6-07 [FR E7-17422]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Petroleum refineries; wastewater treatment systems and storage vessels; requirements; comments due by 11-5-07; published 9-4-07 [FR E7-17009]
Air quality implementation plans; approval and promulgation; various States:
Kentucky; comments due by 11-5-07; published 10-4-07 [FR E7-19327]
Maryland; comments due by 11-5-07; published 10-4-07 [FR E7-19626]
North Carolina; comments due by 11-5-07; published 10-5-07 [FR E7-19317]
Pennsylvania; comments due by 11-5-07; published 10-5-07 [FR E7-19516]
South Carolina; comments due by 11-8-07; published 10-9-07 [FR E7-19646]
Hazardous waste program authorizations:
Michigan; comments due by 11-8-07; published 10-9-07 [FR E7-19634]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Satellite communications—
Broadcasting-satellite service; policies and service rules; comments due by 11-5-07; published 8-22-07 [FR E7-16565]

FEDERAL TRADE COMMISSION
Trade regulation rules:
Mail or telephone order merchandise; comments due by 11-7-07; published 9-11-07 [FR E7-17778]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicaid:
School administration expenditures and transportation for school-age children; elimination of reimbursement; comments due by 11-6-07; published 9-7-07 [FR 07-04356]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Appomattox River, Hopewell, VA; comments due by 11-5-07; published 10-5-07 [FR E7-19676]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Rio Grande silvery minnow; nonessential experimental population reintroduction in the Big Bend Reach (of the Rio Grande); comments due by 11-5-07; published 9-5-07 [FR 07-04286]
Survival enhancement permits—
New York; Karner blue butterfly; safe harbor agreement; comments due by 11-9-07; published 10-10-07 [FR E7-19882]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
Rescue teams; revision of existing standards for training, certification, etc.; comments due by 11-9-07; published 9-6-07 [FR 07-04317]
Rescue teams; revision of existing standards for

training, certification, etc.; comments due by 11-9-07; published 9-6-07 [FR 07-04318]

MERIT SYSTEMS PROTECTION BOARD

Practice and procedures:
Homeland Security Department human resources management system; comments due by 11-5-07; published 10-5-07 [FR E7-19574]

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:
EnergySolutions; comments due by 11-5-07; published 8-21-07 [FR E7-16476]

PERSONNEL MANAGEMENT OFFICE

Allowances and differentials:
Cost-of-living allowances (nonforeign areas)—
Puerto Rico and Hawaii; rate changes; comments due by 11-5-07; published 9-6-07 [FR E7-17638]

POSTAL SERVICE

Domestic Mail Manual:
Express Mail Corporate Accounts; local trust accounts; cash and check deposits elimination; comments due by 11-9-07; published 10-10-07 [FR E7-19934]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Aircraft Industries, a.s.; comments due by 11-5-07; published 10-4-07 [FR E7-19619]
Boeing; comments due by 11-5-07; published 9-19-07 [FR E7-18420]
DG Flugzeugbau GmbH; comments due by 11-5-07; published 10-5-07 [FR E7-19682]
General Electric Co.; comments due by 11-6-07; published 9-7-07 [FR E7-17680]
Honeywell; comments due by 11-5-07; published 9-4-07 [FR E7-17384]
McDonnell Douglas; comments due by 11-5-07; published 9-19-07 [FR E7-18447]

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad locomotive safety standards:
Electronically controlled pneumatic brake systems; comments due by 11-5-07; published 9-4-07 [FR 07-04297]

TRANSPORTATION DEPARTMENT

Pipeline and Hazardous Materials Safety Administration

Pipeline safety:
Advisory bulletins—
Mobile acetylene trailers; use, operation, fabrication, etc.; comments due by 11-5-07; published 9-6-07 [FR 07-04355]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Employee benefits; cafeteria plans; comments due by 11-5-07; published 8-6-07 [FR E7-14827]
Correction; comments due by 11-5-07; published 9-26-07 [FR Z7-14827]

TREASURY DEPARTMENT

Thrift Supervision Office

Prohibited consumer credit practices:
Unfair or deceptive acts or practices; comments due by 11-5-07; published 8-6-07 [FR E7-15179]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3233/P.L. 110–107

To designate the facility of the United States Postal Service located at Highway 49 South in Piney Woods, Mississippi, as the ''Laurence C. and Grace M. Jones Post Office Building''. (Oct. 26, 2007; 121 Stat. 1023)

Last List October 26, 2007

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 2007

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
November 1	Nov 16	Dec 3	Dec 17	Dec 31	Jan 30
November 2	Nov 19	Dec 3	Dec 17	Jan 2	Jan 31
November 5	Nov 20	Dec 5	Dec 20	Jan 4	Feb 4
November 6	Nov 21	Dec 6	Dec 21	Jan 7	Feb 4
November 7	Nov 23	Dec 7	Dec 24	Jan 7	Feb 5
November 8	Nov 23	Dec 10	Dec 24	Jan 7	Feb 6
November 9	Nov 26	Dec 10	Dec 24	Jan 8	Feb 7
November 13	Nov 28	Dec 13	Dec 28	Jan 14	Feb 11
November 14	Nov 29	Dec 14	Dec 31	Jan 14	Feb 12
November 15	Nov 30	Dec 17	Dec 31	Jan 14	Feb 13
November 16	Dec 3	Dec 17	Dec 31	Jan 15	Feb 14
November 19	Dec 4	Dec 19	Jan 3	Jan 18	Feb 19
November 20	Dec 5	Dec 20	Jan 4	Jan 22	Feb 19
November 21	Dec 6	Dec 21	Jan 7	Jan 22	Feb 19
November 23	Dec 10	Dec 24	Jan 7	Jan 22	Feb 21
November 26	Dec 11	Dec 26	Jan 10	Jan 25	Feb 25
November 27	Dec 12	Dec 27	Jan 11	Jan 28	Feb 25
November 28	Dec 13	Dec 28	Jan 14	Jan 28	Feb 26
November 29	Dec 14	Dec 31	Jan 14	Jan 28	Feb 27
November 30	Dec 17	Dec 31	Jan 14	Jan 29	Feb 28