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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1216; Directorate Identifier 2008–NM–111–AD; Amendment 39–15841; AD 2009–06–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Airplanes

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

ACTION: Final rule.

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

[S]everal cases of wing anti-ice piccolo duct failure reported on CL–600–2B19 (CRJ) aircraft. Although there have been no failures reported on Challenger aircraft, similar ducts are installed on the above Challenger models.

* * * * *

Cracking of the wing anti-ice piccolo ducts could result in air leakage, with an adverse effect on the anti-ice air distribution pattern and a possible unannunciated insufficient heat condition. * * *

The unsafe condition is anti-ice system air leakage with a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to the flightcrew, and consequent reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 28, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 28, 2009.

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

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 17, 2008 (73 FR 67820). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There have been several cases of wing anti-ice piccolo duct failure reported on CL–600–2B19 (CRJ) aircraft. Although there have been no failures reported on Challenger aircraft, similar ducts are installed on the above Challenger models [Bombardier CL–600–1A11, CL–600–2A12, and CL–600–2B16 airplanes].

Upon investigation, it has been determined that ducts manufactured since June 2000, and installed since 1 August 2000, are susceptible to cracking due to the process used to drill the holes in the ducts. These ducts were installed on CL–600–2B16 aircraft, serial numbers 5469 through 5635 in production, but may also have been installed as replacements on CL–600–1A11, CL–600–2A12 and other CL–600–2B16 aircraft.

Cracking of the wing anti-ice piccolo ducts could result in air leakage, with an adverse effect on the anti-ice air distribution pattern and a possible unannunciated insufficient heat condition. As a result, the airplane flight manual (AFM) instructions have been revised to provide proper annunciation of an insufficient heat condition, utilizing existing messages and indications, with instructions, to the pilot, to leave icing conditions if sufficient heat cannot be achieved or maintained.

This directive mandates the amendment of the AFM procedures, in addition to checking the part numbers and serial numbers of the installed wing anti-ice piccolo ducts and replacing them as necessary.

The unsafe condition is anti-ice system air leakage with a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to the flightcrew, and consequent reduced controllability of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Change to Applicability

Since we issued the NPRM, we discovered that we inadvertently designated duplicate models in paragraphs (c)(3) and (c)(4) of Table 1 of the NPRM. Those paragraphs both specified Bombardier Model ''CL–600–2B16 (CL–601–3A, CL–601–3R, & CL–604) airplanes.'' However, paragraph (c)(3) of the AD should have identified Bombardier Model ''CL–600–2B16 (CL–601–3A & CL–601–3R) airplanes,'' and paragraph (c)(4) of the AD should have identified Model ''CL–600–2B16 (CL–604) airplanes.'' The serial numbers that appeared in paragraphs (c)(3) and (c)(4) of the NPRM were identified correctly in the NPRM and remain unchanged in this final rule. We have changed paragraphs (c)(3) and (c)(4) of this AD accordingly.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making

these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD will affect 108 products of U.S. registry. We also estimate that it will take about 37 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $319,680, or $2,960 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–06–05 Bombardier, Inc. (Formerly Canadair): Amendment 39–15841. Docket No. FAA–2008–1216; Directorate Identifier 2008–NM–111–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in Table 1, paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, certificated in any category.

TABLE 1—AIRPLANES AFFECTED BY THIS AD

Bombardier model	Serial Nos.
(1) CL–600–1A11 (CL–600) airplanes	1004 through 1085 inclusive.
(2) CL–600–2A12 (CL–601) airplanes	3001 through 3066 inclusive.
(3) CL–600–2B16 (CL–601–3A & CL–601–3R) airplanes	5001 through 5194 inclusive.
(4) CL–600–2B16 (CL–604) airplanes	5301 through 5635 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 30: Ice and Rain Protection.

Reason

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

There have been several cases of wing anti-ice piccolo duct failure reported on CL–600–2B19 (CRJ) aircraft. Although there have been no failures reported on Challenger aircraft, similar ducts are installed on the above Challenger models.

Upon investigation, it has been determined that ducts manufactured since June 2000, and installed since 1 August 2000, are susceptible to cracking due to the process used to drill the holes in the ducts. These ducts were installed on CL–600–2B16 aircraft, serial numbers 5469 through 5635 in production, but may also have been installed as replacements on CL–600–1A11, CL–600–2A12 and other CL–600–2B16 aircraft.

Cracking of the wing anti-ice piccolo ducts could result in air leakage, with an adverse effect on the anti-ice air distribution pattern and a possible unannunciated insufficient heat condition. As a result, the airplane flight manual (AFM) instructions have been revised to provide proper annunciation of an insufficient heat condition, utilizing existing messages and indications, with instructions, to the pilot, to leave icing conditions if sufficient heat cannot be achieved or maintained.

This directive mandates the amendment of the AFM procedures, in addition to checking the part numbers and serial numbers of the installed wing anti-ice piccolo ducts and replacing them as necessary.

The unsafe condition is anti-ice system air leakage with a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to the flightcrew, and consequent reduced controllability of the airplane.

Actions and Compliance

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

(1) For airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD: Within 30 days after the effective date of this AD, revise the Normal and Abnormal Procedures sections of the applicable

Canadair Challenger Airplane Flight Manual (AFM) by inserting a copy of the applicable temporary revision (TR) listed in Table 2 of this AD. When the information in the applicable TR is included in the general revisions of the AFM, the general revisions may be inserted in the AFM and the TR may be removed.

TABLE 2—TEMPORARY REVISIONS

Canadair TR—	Dated—	To the—
(i) 600/23	August 16, 2006	Canadair Challenger Model CL–600–1A11 AFM.
(ii) 600–1/19	August 16, 2006	Canadair Challenger Model CL–600–1A11 AFM (Winglets).
(iii) 601/14	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, Product Support Publication (PSP) 601–1B–1.
(iv) 601/15	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1A–1.
(v) 601/19	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1B.
(vi) 601/26	August 16, 2006	Canadair Challenger Model CL–600–2B16 AFM, PSP 601A–1.
(vii) 601/27	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM.
(viii) 601/27	August 16, 2006	Canadair Challenger Model CL–600–2B16 AFM, PSP 601A–1–1.
(ix) 604/20	April 17, 2006	Canadair Challenger Model CL–604 AFM, PSP 604–1.

(2) For airplanes identified in paragraphs (c)(1), (c)(2) and (c)(3) of this AD, and for Model CL–600–2B16 (CL–604) airplanes, serial numbers 5301 through 5468 inclusive: Prior to the accumulation of 2,000 total flight hours, or within 60 months after the effective date of this AD, whichever occurs first, review the airplane maintenance records to determine if any anti-ice piccolo ducts or complete leading edge sections were replaced since August 1, 2000.

(3) For airplanes identified in paragraphs (c)(1), (c)(2) and (c)(3) of this AD, and for Model CL–600–2B16 (CL–604) airplanes, serial numbers 5301 through 5468 inclusive: If, during the action required by paragraph (f)(2) of this AD, it is determined that any anti-ice piccolo duct has been replaced since August 1, 2000, before further flight do a visual inspection to determine if any affected serial number is installed as identified in paragraph 2.C. of the applicable service bulletin identified in Table 3 of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the duct can be conclusively determined from that review. If any affected serial number is installed, before further flight replace the piccolo duct with a serviceable piccolo duct that does not have a serial number identified in paragraph 2.C. of the applicable service bulletin identified in Table 3 of this AD. Do all actions in accordance with the Accomplishment Instructions of the applicable service bulletin listed in Table 3 of this AD.

TABLE 3—SERVICE BULLETINS

Model—	Bombardier Service Bulletin—	Revision level—	Date—
(i) CL–600–1A11 (CL–600) airplanes	600–0734	Original	November 30, 2006.
(ii) CL–600–2A12 (CL–601) airplanes	601–0585	Original	November 30, 2006.
(iii) CL–600–2B16 (CL–601–3A, CL–601–3R) airplanes	601–0585	Original	November 30, 2006.
(iv) CL–600–2B16 (CL–604) airplanes	604–30–003	01	January 21, 2008.

(4) For Model CL–600–2B16 (CL–604) airplanes, serial numbers 5469 through 5635 inclusive: Prior to the accumulation of 2,000 total flight hours, or within 60 months after the effective date of this AD, whichever occurs first, do a visual inspection of the anti-ice piccolo ducts to determine if any affected serial number identified in paragraph 2.C. of the Bombardier Service Bulletin 604–30–003, Revision 01, dated January 21, 2008, is installed. If any affected serial number is installed, before further flight replace the piccolo duct with a serviceable piccolo duct that does not have a serial number identified in paragraph 2.C. of Bombardier Service Bulletin 604–30–003, Revision 01, dated January 21, 2008. Do all actions in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 604–30–003, Revision 01, dated January 21, 2008.

(5) As of the effective date of this AD, no person may install on any airplane an anti-ice piccolo duct with a serial number identified in paragraph 2.C. of the applicable service bulletin identified in Table 3 of this AD.

(6) Actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 604–30–003, dated November 30, 2006, are acceptable for compliance with the corresponding actions in this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Dan Parrillo, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(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 Canadian Airworthiness Directive CF–2008–18, dated May 9, 2008, and the service information identified in Table 2 and Table 3 of this AD, for related information.

Material Incorporated by Reference

(i) You must use the service information contained in Tables 4 and 5 of this AD to do the actions required by this AD, as applicable, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

TABLE 4—SERVICE BULLETINS INCORPORATED BY REFERENCE

Bombardier Service Bulletin—	Revision—	Dated—
600–0734	Original	November 30, 2006.
601–0585	Original	November 30, 2006.
604–30–003	01	January 21, 2008.

TABLE 5—TEMPORARY REVISIONS INCORPORATED BY REFERENCE

Canadair TR—	Dated—	To the—
600/23	August 16, 2006	Canadair Challenger Model CL–600–1A11 AFM.
600–1/19	August 16, 2006	Canadair Challenger Model CL–600–1A11 AFM (Winglets).
601/14	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1B–1.
601/15	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1A–1.
601/19	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM, PSP 601–1B.
601/26	August 16, 2006	Canadair Challenger Model CL–600–2B16 AFM, PSP 601A–1.
601/27	August 16, 2006	Canadair Challenger Model CL–600–2A12 AFM.
601/27	August 16, 2006	Canadair Challenger Model CL–600–2B16 AFM, PSP 601A–1–1.
604/20	April 17, 2006	Canadair Challenger Model CL–604 AFM, PSP 604–1.

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5968 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0018; Directorate Identifier 2007–NM–145–AD; Amendment 39–15842; AD 2009–06–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes and Model A300–600 Series Airplanes

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

ACTION: Final rule.

SUMMARY: This airworthiness directive (AD) supersedes two existing ADs. One AD applies to certain Airbus Model A310–200 and –300 series airplanes. That AD currently requires repetitive inspections for cracking of the flap transmission shafts, and replacement of the transmission shafts if necessary. That AD also provides an optional terminating action for the repetitive inspections. The other existing AD applies to all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes); and Model A310–200 and –300 series airplanes. That AD currently requires a one-time inspection of the trimmable horizontal stabilizer actuator (THSA), corrective actions if necessary, and follow-on repetitive tasks. This new AD also requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations and maintenance tasks for aging systems maintenance. This AD results from the manufacturer's determination that life limitations and maintenance tasks are necessary to ensure continued operational safety of the affected airplanes. We are issuing this AD to prevent reduced structural integrity of these airplanes due to the failure of system components.

DATES: This AD becomes effective April 28, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 28, 2009.

On August 29, 2006 (71 FR 42021, July 25, 2006), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A300–27–6044, Revision 04, dated September 10, 2001; and Airbus Service Bulletin A310–27–2089, Revision 02, dated June 28, 2001.

On June 20, 2006 (71 FR 28254, May 16, 2006), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005; and Airbus Service Bulletin A310–27–2095, dated March 29, 2000.

ADDRESSES: For Airbus service information identified in this AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; *e-mail: account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. For TRW Aeronautical Systems service information identified in this AD, contact TRW Systèmes Aéronautiques Civils SAS, Product Support Department, 7–9 Avenue de l'Eguillette, Saint Ouen l'Aumone BP 7186, 95056 Cergy-Pontoise Cedex France, telephone +33 1 34 32 63 00; fax +33 1 34 32 63 10.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and

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

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes two existing ADs: AD 2006–10–11, amendment 39–14595 (71 FR 28254, May 16, 2006); and AD 2006–15–10, amendment 39–14690 (71 FR 42021, July 25, 2006). AD 2006–10–11 applies to certain Airbus Model A310–200 and –300 series airplanes and requires repetitive inspections for cracking of the flap transmission shafts, and replacing the transmission shafts if necessary. That existing AD also provides an optional terminating action for the repetitive inspections. AD 2006–15–10 applies to all Airbus Model A310 and A300–600 series airplanes and requires a one-time inspection of the trimmable horizontal stabilizer actuator (THSA), corrective actions if necessary, and follow-on repetitive tasks.

That supplemental NPRM was published in the **Federal Register** on September 26, 2008 (73 FR 55781). That supplemental NPRM proposed to continue to require the actions required by the two existing ADs. That supplemental NPRM also proposed to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new limitations and maintenance tasks for aging systems maintenance. In addition, that supplemental NPRM proposed to revise the original NPRM by reducing the initial compliance times.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the supplemental NPRM or on the determination of the cost to the public.

Explanation of Changes

We have removed the ''Service Bulletin References'' paragraph in the ''RESTATEMENT OF REQUIREMENTS OF AD 2006–15–10'' section of this AD. Instead, we refer to the required service documents in the individual paragraphs of this AD.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2006–10–11).	1	$80	$80 per inspection cycle	59	$4,720 per inspection cycle.
Inspection (required by AD 2006–15–10).	3	80	$240	213	$51,120.
Repetitive follow-on tasks (required by AD 2006–15–10).	12	80	$960 per inspection cycle	213	$204,480 per inspection cycle.
ALS revision (new action)	1	80	$80	213	$17,040.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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. *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, 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14595 (71 FR 28254, May 16, 2006), and amendment 39–14690 (71 FR 42021, July 25, 2006), and by adding the following new airworthiness directive (AD):

2009–06–06 Airbus: Amendment 39–15842. Docket No. FAA–2008–0018; Directorate Identifier 2007–NM–145–AD.

Effective Date

(a) This AD becomes effective April 28, 2009.

Affected ADs

(b) This AD supersedes AD 2006–10–11 and AD 2006–15–10.

Applicability

(c) This AD applies to all Airbus Model A310 series airplanes; and Model A300–600 series airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (q) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from the manufacturer's determination that life limitations and maintenance tasks are necessary to ensure continued operational safety of the affected airplanes. We are issuing this AD to prevent reduced structural integrity of these airplanes due to the failure of system components.

Compliance

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

Restatement of Requirements of AD 2006–10–11

Inspection and Corrective Action

(f) For Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, except for airplanes on which Airbus Modification 12247 has been embodied in production: At the earlier of the compliance times specified in paragraph (f)(1) or (f)(2) of this AD, perform a detailed inspection for stress corrosion cracking of the flight transmission shafts located between the power control unit (PCU) and the torque limiters in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005. Thereafter, repeat the inspections as required by paragraph (g) of this AD. Before further flight, replace any cracked transmission shaft discovered during any inspection required by this AD with a new or reconditioned shaft, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2095, dated March 29, 2000. Doing an inspection in accordance with paragraph (n) or (o) of this AD terminates the requirements of this paragraph.

(1) Within 2,000 flight hours after the last flap asymmetry protection test performed in accordance with Airbus A310 Maintenance Planning Document (MPD) Task 275600–01–1.

(2) Within 8,000 flight cycles after the last flap asymmetry protection test performed in accordance with Airbus A310 MPD Task 275600–02–1 or 800 flight cycles after June 20, 2006 (the effective date of AD 2006–10–11), whichever comes later.

Note 2: Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005, refers to Lucas Liebherr Service Bulletin 551A–27–624, Revision 1, dated August 18, 2000, as a source of service information for accomplishing the inspections.

Note 3: Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005, refers to Airbus Service Bulletin A310–27–2095, dated March 29, 2000, as a source of information for replacing the flap transmission shafts.

Note 4: Airbus Service Bulletin A310–27–2095, dated March 29, 2000, refers to Lucas Liebherr Service Bulletin 551A–27–M551–05, dated January 12, 2000, as an additional source of information for replacing the flap transmission shafts.

Repetitive Inspections

(g) Repeat the inspection required by paragraph (f) of this AD at the applicable times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD. Doing an inspection in accordance with paragraph (n) or (o) of this AD terminates the requirements of this paragraph.

(1) Before further flight after any occurrence of jamming of the flap transmission system.

(2) At intervals not to exceed 2,000 flight hours after each flap asymmetry protection test performed in accordance with Airbus A310 MPD Task 275600–01–1.

(3) At intervals not to exceed 8,000 flight cycles after each flap asymmetry protection test performed in accordance with Airbus A310 MPD Task 275600–02–1.

Optional Terminating Action

(h) Replacing any flap transmission shaft with a new or reconditioned transmission shaft in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–27–2095, dated March 29, 2000, ends the inspections required by paragraphs (f) and (g) of this AD for that transmission shaft only.

Actions Performed Using Previously Issued Service Information

(i) Actions performed in accordance with Airbus Service Bulletin A310–27–2092, dated April 9, 1999; or Revision 01, dated December 11, 2001; are considered acceptable for compliance with the corresponding requirements of paragraphs (f) and (g) of this AD.

No Reporting

(j) Although Airbus Service Bulletin A310–27–2092, Revision 02, dated April 11, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Restatement of Requirements of AD 2006–15–10

Inspection

(k) At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD, do a detailed inspection of specified components of the trimmable horizontal stabilizer actuator (THSA) in accordance with paragraph 1.E.(2)(a) and the Accomplishment Instructions of the applicable service bulletin as identified in Table 1 of this AD. Repair any discrepancy before further flight in accordance with TRW Aeronautical Systems Horizontal Stabilizer Actuator 47142 Series Component Maintenance Manual with Illustrated Parts List 27–44–13, Revision 6, dated September 14, 2001; or a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA) (or its delegated agent). Doing an inspection in accordance with paragraph (n) or (o) of this AD terminates the requirements of this paragraph.

(1) If the flight hours accumulated on the THSA can be positively determined: Inspect at the earlier of:

(i) Before the accumulation of 47,000 total flight hours on the THSA, or within 600 flight hours after August 29, 2006 (the effective date of AD 2006–15–10), whichever occurs later.

(ii) Within 25 years since the THSA was new or within 600 flight hours after August 29, 2006, whichever occurs later.

(2) If the flight hours accumulated on the THSA cannot be positively determined: Inspect before the accumulation of 47,000 total flight hours on the airplane, or within 600 flight hours after August 29, 2006, whichever occurs later.

TABLE 1—SERVICE BULLETINS FOR THE REQUIREMENTS OF PARAGRAPH (k) OF THIS AD

Required Airbus Service Bulletin	Approved Airbus Service Bulletin version for actions done before the effective date of this AD	Airbus airplane model
Airbus Service Bulletin A300–27–6044, Revision 04, dated September 10, 2001; or Airbus Mandatory Service Bulletin A300–27–6044, Revision 05, dated August 29, 2006.	A300–27–6044, Revision 02, dated August 26, 2000; or Revision 03, dated June 28, 2001.	A300 B4–601, B4–603, B4–620, and B4–622. A300 B4–605R and B4–622R. A300 B4–605R and B4–622R. A300 C4–605R Variant F.
Airbus Service Bulletin A310–27–2089, Revision 02, dated June 28, 2001; or Airbus Mandatory Service Bulletin A310–27–2089, Revision 03, dated August 29, 2006.	.....	A310–203, –204, –221, and –222. A310–304, –322, –324, and –325.

Note 5: The service bulletins specified in Table 1 of this AD refer to Goodrich Actuation Systems Service Bulletin 47142–27–11, Revision 3, dated April 25, 2005, as an additional source of service information for the required actions.

Note 6: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Follow-on Repetitive Tasks

(l) After the inspection required by paragraph (k) of this AD: Do the repetitive tasks in accordance with the Accomplishment Instructions and at the times specified in paragraph 1.E.(2)(b) of the applicable service bulletin identified in Table 2 of this AD, except as provided by paragraph (m) of this AD. The repetitive tasks are valid only until the THSA operational life exceeds 65,000 flight hours, 40,000 flight cycles, or 25 years, whichever occurs first. Before the THSA is operated beyond these extended life goals, it must be replaced with a new or serviceable THSA, except as required by paragraph (m) of this AD. Doing an inspection in accordance with paragraph (n) or (o) of this AD terminates the requirements of this paragraph.

TABLE 2—SERVICE BULLETINS FOR THE REQUIREMENTS OF PARAGRAPH (L) OF THIS AD

Required Airbus Service Bulletin	Approved Airbus Service Bulletin version for actions done before the effective date of this AD	Airbus airplane model
Airbus Service Bulletin A300–27–6044, Revision 04, dated September 10, 2001; or Airbus Mandatory Service Bulletin A300–27–6044, Revision 05, dated August 29, 2006.	A300–27–6044, Revision 02, dated August 26, 2000; or Revision 03, dated June 28, 2001.	A300 B4–601, B4–603, B4–620, and B4–622. A300 B4–605R and B4–622R. A300 B4–605R and B4–622R. A300 C4–605R Variant F.
Airbus Service Bulletin A310–27–2089, Revision 02, dated June 28, 2001; or Airbus Mandatory Service Bulletin A310–27–2089, Revision 03, dated August 29, 2006.	A310–27–2089, Revision 01, dated August 25, 2000.	A310–203, –204, –221, and –222. A310–304, –322, –324, and –325.

Note 7: For additional information on the THSA life limits, refer to Airbus Operators Information Telex (OIT) SE 999.0074/05/BB, dated August 3, 2005.

THSA Replacement

(m) For any THSA, whether discrepant or not, that is replaced with a new or serviceable THSA: Within 47,000 flight hours or 25 years, whichever occurs first, after the THSA is replaced, do the applicable tasks specified in paragraph 1.E.(2)(a) and the Accomplishment Instructions of the applicable service bulletin identified in Table 3. Thereafter repeat the tasks within the repetitive intervals specified in paragraph 1.E.(2)(b) of the applicable service bulletin. Doing the corresponding tasks in accordance with paragraph (n) or (o) of this AD terminates the requirements of this paragraph.

TABLE 3—SERVICE BULLETINS FOR THE REQUIREMENTS OF PARAGRAPH (m) OF THIS AD

Required Airbus Service Bulletin	Approved Airbus Service Bulletin version for actions done before the effective date of this AD	Airbus airplane model
Airbus Service Bulletin A300–27–6044, Revision 04, dated September 10, 2001; or Airbus Mandatory Service Bulletin A300–27–6044, Revision 05, dated August 29, 2006.	A300–27–6044, Revision 02, dated August 26, 2000; or Revision 03, dated June 28, 2001.	A300 B4–601, B4–603, B4–620, and B4–622. A300 B4–605R and B4–622R. A300 F4–605R and F4–622R. A300 C4–605R Variant F.
Airbus Service Bulletin A310–27–2089, Revision 02, dated June 28, 2001; or Airbus Mandatory Service Bulletin A310–27–2089, Revision 03, dated August 29, 2006.	A310–27–2089, Revision 01, dated August 25, 2000.	A310–203, –204, –221, and –222. A310–304, –322, –324, and –325.

New Requirements of This AD

Revise Airworthiness Limitations Section (ALS) To Incorporate Limitations and Maintenance Tasks for Aging Systems Maintenance

(n) Within 3 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness (ICA) to incorporate Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006 (for Model A310 series airplanes); or Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006 (for Model A300–600 series airplanes). For all tasks identified in Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; and Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; do the tasks at the later of the times specified in paragraphs (n)(1) and (n)(2) of this AD, as applicable, except as provided by paragraph (o) of this AD. The repetitive inspections must be accomplished thereafter at the interval specified in Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; or Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; as applicable. Doing an inspection required by this paragraph terminates the corresponding inspection required by paragraph (f), (g), (k), (l), or (m) of this AD.

(1) At the initial compliance times (thresholds) specified in Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; or Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; as applicable; with the compliance times starting from the later of the times specified in paragraphs (n)(1)(i) and (n)(1)(ii) of this AD.

(i) Since first flight of the airplane.

(ii) Since the applicable part was new or refurbished if the part's life (in flight hours, flight cycles, landings, or calendar time, as applicable) can be conclusively determined.

(2) Within 3 months after doing the revision of the ALS of the ICA required by paragraph (o) of this AD.

Note 8: For additional information on the THSA life limits, refer to Airbus OIT SE 999.0074/05/BB, dated August 3, 2005.

Note 9: For additional information on the THSA life limits and calculation method for unknown history of parts, refer to Airbus OIT SE 999.0008/07/LB, dated January 16, 2007; and Airbus Service Information Letter 05–008, Revision 01, dated February 21, 2007.

(o) For airplanes on which any life limitation/maintenance task has been complied with in accordance with the requirements of paragraph (f), (g), (k), (l), or (m) of this AD (e.g., AD 2006–10–11 or AD 2006–15–10), the last accomplishment of each limitation/task must be retained as a starting point for the accomplishment of each corresponding limitation/task interval now introduced in Airbus A310 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; and Airbus A300–600 ALS Part 4—Ageing Systems Maintenance, Revision 01, dated December 21, 2006; as applicable. Doing an inspection required by this paragraph terminates the corresponding inspection required by paragraph (f), (g), (k), (l), or (m) of this AD.

(p) Except as provided by paragraph (q) of this AD: After accomplishing the actions specified in paragraphs (n) and (o) of this AD, no alternative inspection, inspection intervals, or limitations may be used.

Alternative Methods of Compliance (AMOCs)

(q)(1) 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: Thomas Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; 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) AMOCs approved previously in accordance with AD 2006–10–11 are not approved as AMOCs with this AD.

(3) AMOCs approved previously in accordance with AD 2006–15–10 are not approved as AMOCs with this AD.

Related Information

(r) EASA airworthiness directive 2007–0092, dated April 10, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(s) You must use the service information identified in Table 4 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional actions specified by this AD, you must use Airbus Service Bulletin A310–27–2095, dated March 29, 2000, to perform those actions, unless the AD specifies otherwise.

TABLE 4—MATERIAL INCORPORATED BY REFERENCE FOR THE ACTIONS REQUIRED BY THIS AD

Document	Revision	Date
Airbus A300–600 Airworthiness Limitations Section (ALS) Part 4—Ageing Systems Maintenance	01	December 21, 2006.
Airbus A310 Airworthiness Limitations Section (ALS) Part 4—Ageing Systems Maintenance	01	December 21, 2006.
Airbus Mandatory Service Bulletin A300–27–6044	05	August 29, 2006.
Airbus Mandatory Service Bulletin A310–27–2089	03	August 29, 2006.
Airbus Service Bulletin A300–27–6044	04	September 10, 2001.
Airbus Service Bulletin A310–27–2089	02	June 28, 2001.
Airbus Service Bulletin A310–27–2092	02	April 11, 2005.
Airbus Service Bulletin A310–27–2095	Original	March 29, 2000.
TRW Aeronautical Systems Horizontal Stabilizer Actuator 47142 Series Component Maintenance Manual with Illustrated Parts List 27–44–13.	6	September 14, 2001.

(TRW Aeronautical Systems Horizontal Stabilizer Actuator 47142 Series Component Maintenance Manual with Illustrated Parts List 27–44–13 contains the following discrepancies: The revision level of the document is only specified on the Letter of Transmittal; the Letter of Transmittal is not specified in the List of Effective Pages; and the List of Effective Pages refers to page 748a as 748b.)

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

TABLE 5—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Airbus A300–600 Airworthiness Limitations Section (ALS) Part 4—Ageing Systems Maintenance	01	December 21, 2006.
Airbus A310 Airworthiness Limitations Section (ALS) Part 4—Ageing Systems Maintenance	01	December 21, 2006.
Airbus Mandatory Service Bulletin A300–27–6044	05	August 29, 2006.
Airbus Mandatory Service Bulletin A310–27–2089	03	August 29, 2006.

TABLE 5—NEW MATERIAL INCORPORATED BY REFERENCE—Continued

Document	Revision	Date
TRW Aeronautical Systems Horizontal Stabilizer Actuator 47142 Series Component Maintenance Manual with Illustrated Parts List 27–44–13.	Original	September 14, 2001.

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 6 of this AD on August 29, 2006 (71 FR 42021, July 25, 2006).

TABLE 6—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE IN AD 2006–15–10

Document	Revision	Date
Airbus Service Bulletin A300–27–6044	04	September 10, 2001.
Airbus Service Bulletin A310–27–2089	02	June 28, 2001.

(3) The Director of the Federal Register previously approved the incorporation by reference of the service information contained in Table 7 of this AD on June 20, 2006 (71 FR 28254, May 16, 2006).

TABLE 7—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE IN AD 2006–10–11

Document	Revision	Date
Airbus Service Bulletin A310–27–2092	02	April 11, 2005.
Airbus Service Bulletin A310–27–2095	Original	March 29, 2000.

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

(5) For TRW Aeronautical Systems service information identified in this AD, contact TRW Systémes Aeacute;ronautiques Civils SAS, Product Support Department, 7–9 Avenue de l'Eguillette, Saint Ouen l'Aumone BP 7186, 95056 Cergy-Pontoise Cedex France, telephone +33 1 34 32 63 00; fax +33 1 34 32 63 10.

(6) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5969 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0668; Directorate Identifier 2008–NM–088–AD; Amendment 39–15847; AD 2009–06–11]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190 Airplanes

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

ACTION: Final rule.

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

During aircraft structure fatigue tests, cracks were found in the wing lower skin stringers between ribs 7 and 10 on both wings. In order to prevent fatigue cracks in the wing lower skin stringers, which could result in fuel leakage and reduced structural integrity of the wing, the referred stringers must be reworked.

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

DATES: This AD becomes effective April 28, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 28, 2009.

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

FOR FURTHER INFORMATION CONTACT: Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 24, 2008 (73 FR 35597). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During aircraft structure fatigue tests, cracks were found in the wing lower skin stringers between ribs 7 and 10 on both wings. In order to prevent fatigue cracks in the wing lower skin stringers, which could result in fuel leakage and reduced structural integrity of the wing, the referred stringers must be reworked.

The corrective actions include spot-facing the lower wing stringers between ribs 7 and 10, doing a dye-penetrant inspection of the reworked stringers, shot-or flap-peening if no cracking is found, contacting the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (ANAC) (or its delegated agent) if any crack is found, and repairing.

Comments

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

Request To Include New Revision of Service Bulletin and New Inspection Option

EMBRAER states that it has issued EMBRAER Service Bulletin 190–57–0005, Revision 02, dated May 27, 2008. (We referred to EMBRAER Service Bulletin 190–57–0005, Revision 01, dated October 27, 2006, as the appropriate source of service information in the NPRM.) EMBRAER states that EMBRAER Service Bulletin 190–57–0005, Revision 02, dated May 27, 2008, provides procedures for an eddy current inspection rather than the dye-penetrant inspection method specified in EMBRAER Service Bulletin 190–57–0005, Revision 01, dated October 27, 2006. The eddy current inspection method uses equipment that is more appropriate for handling inside the fuel tank. EMBRAER states that airplanes already inspected using the dye-penetrant inspection method do not require additional inspection, and requests that EMBRAER Service Bulletin 190–57–0005, Revision 01, dated October 27, 2006, be considered an alternative method for complying with the NPRM.

We agree that the eddy current inspection method specified in EMBRAER Service Bulletin 190–57–0005, Revision 02, dated May 27, 2008, is an acceptable optional way to do the inspection for cracking of the reworked stringers. Therefore, we have revised paragraph (f) of this AD to specify that operators may accomplish either the dye-penetrant inspection in accordance with EMBRAER Service Bulletin 190–57–0005, Revision 01, dated October 27, 2006, or the eddy current inspection in accordance with EMBRAER Service Bulletin 190–57–0005, Revision 02, dated May 27, 2008.

Request To Change Shot-Peening to Flap-Peening

EMBRAER states that paragraph (f)(2)(i) of the NPRM should specify flap-peening of the reworked stringers if no cracking is found, rather than shot-peening as is specified in the NPRM. EMBRAER states that EMBRAER Service Bulletin 190–57–0005, Revision 02, dated May 27, 2008, specifies flap peening rather than shot peening.

We partially agree. We agree with the request to specify flap-peening in paragraph (f)(2)(i) of the AD; however, we disagree with specifying only flap peening in that paragraph because shot-peening is also an acceptable method of compliance. Airplanes that are in compliance with EMBRAER Service Bulletin 190–57–0005, Revision 01, dated October 27, 2006, do not need additional action. We have revised paragraph (f)(2)(i) of this AD to specify that both shot peening and flap peening are acceptable methods of compliance.

Request To Revise Contact for Repair Information

EMBRAER requests that we revise paragraph (f)(2)(ii) of the NPRM to specify that operators may contact not only Agência Nacional de Aviação Civil (ANAC) for repair instructions if cracking is found, but also its delegated agent, or the Manager of the FAA's Transport Airplane Directorate (TAD).

We agree that contacting one of ANAC's delegated agents or the TAD is appropriate. Therefore, we have changed paragraphs (e) and (f)(2)(ii) of this AD, and the last paragraph of the ''Discussion'' section, to specify that operators may also contact a delegated agent of ANAC, or the Manager of the TAD for repair instructions.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 18 products of U.S. registry. We also estimate that it will take 110 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $158,400 or $8,800 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–06–11 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–15847. Docket No. FAA–2008–0668; Directorate Identifier 2008–NM–088–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 190–100 STD, –100 LR, –100 IGW, –100ECJ, –200 STD, –200 LR, and –200 IGW airplanes, certificated in any category, serial numbers 19000004, 19000006 through 19000028 inclusive, and 19000030 through 19000039 inclusive.

Subject

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

Reason

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

During aircraft structure fatigue tests, cracks were found in the wing lower skin stringers between ribs 7 and 10 on both wings. In order to prevent fatigue cracks in the wing lower skin stringers, which could result in fuel leakage and reduced structural integrity of the wing, the referred stringers must be reworked.

The corrective actions include spot-facing the lower wing stringers between ribs 7 and 10, doing a dye-penetrant or eddy current inspection of the reworked stringers, shot- or flap-peening if no cracking is found, contacting the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (ANAC) (or its delegated agent) if any crack is found, and repairing.

Actions and Compliance

(f) Unless already done: Prior to the accumulation of 5,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, do the following actions.

(1) Spot-face the lower wing stringers between ribs 7 and 10 on both wings by changing their run out in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–57–0005, Revision 01, dated October 27, 2006; or Revision 02, dated May 27, 2008.

(2) Do a dye-penetrant inspection for cracking of the reworked stringers in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–57–0005, Revision 01, dated October 27, 2006; or an eddy current inspection for cracking of the reworked stringers in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–57–0005, Revision 02, dated May 27, 2008.

(i) If no cracking is detected: Before further flight, flap-peen or shot-peen the stringer reworked area following the parameters indicated in the Accomplishment Instructions of EMBRAER Service Bulletin 190–57–0005, Revision 01, dated October 27, 2006; or Revision 02, dated May 27, 2008.

(ii) If any cracking is detected: Before further flight, repair the airplane using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the ANAC (or its delegated agent).

(3) Actions done before the effective date of this AD in accordance with EMBRAER Service Bulletin 190–57–0005, dated October 10, 2006; are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

(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: Kenny Kaulia, Aerospace Engineer, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(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 2008–01–02, effective February 25, 2008; EMBRAER Service Bulletin 190–57–0005, Revision 01, dated October 27, 2006; and EMBRAER Service Bulletin 190–57–0005, Revision 02, dated May 27, 2008; for related information.

Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 190–57–0005, Revision 01, dated October 27, 2006; or EMBRAER Service Bulletin 190–57–0005, Revision 02, dated May 27, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on February 20, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5966 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0846; Directorate Identifier 2008–NM–045–AD; Amendment 39–15857; AD 2009–06–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, 757–200PF, and 757–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 757–200, 757–200PF, and 757–300 series airplanes. This AD requires, for certain airplanes, measuring the electrical bond resistance at certain stations and doing any applicable repair; installing support brackets for the hot short protector and new support clamps for the wire bundles; installing the equipment of the hot short protector; and modifying an existing wire bundle and installing a new wire bundle. This AD also requires, for certain other airplanes, measuring the electrical bond resistance at certain stations, measuring the electrical bonding resistance between the hot short protector and rear spar web, and doing any applicable repair. This AD also requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the center fuel tank densitometer from overheating and becoming a potential ignition source inside the fuel tank, which, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective April 28, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 28, 2009.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jen Pei, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6409; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 757–200, 757–200PF, and 757–300 series airplanes. That NPRM was published in the **Federal Register** on August 7, 2008 (73 FR 45895). That NPRM proposed to require, for certain airplanes, measuring the electrical bond resistance at certain stations and doing any applicable repair; installing support brackets for the hot short protector and new support clamps for the wire bundles; installing the equipment of the hot short protector; and modifying an existing wire bundle and installing a new wire bundle. That NPRM also proposed to require, for certain other airplanes, measuring the electrical bond resistance at certain stations, measuring the electrical bonding resistance between the hot short protector and rear spar web, and doing any applicable repair. That NPRM also proposed to require revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness.

Comments

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

Support for the NPRM

Boeing concurs with the NPRM.

Request to Exempt Cargo-Only Airplanes

Air Transport Association, on behalf of one of its members, UPS, proposes that cargo-only airplanes be exempt from installing the hot short protector specified in the NPRM, based on the same reasons used to exclude cargo-only airplanes in Federal Aviation Regulations change, ''Reduction of Fuel Tank Flammability in Transport Category Airplanes,'' Docket FAA–2005–22997 (Final Rule issued July 9, 2008, amendment numbers 25–125, 26–2, 121–340, 125–55, and 129–46):

- Cargo operations are predominately at night when outside temperatures are lower.
- Cargo operators turn off packs prior to takeoff.
- Cargo operators have fewer daily flights (2) compared to passenger operators (4–6).
- The cost/benefit does not justify retrofit on current cargo aircraft.

UPS recommends that all cargo-only airplanes currently in operation be exempt from the retrofit/installation portion of the NPRM and service bulletin. UPS is of the opinion that changing the Instructions for Continuing Airworthiness and maintenance programs to perform bonding checks will be sufficient in addressing the potential short issue in existing cargo-only airplanes. UPS does not object to new cargo-only airplanes having the hot short protector installed.

We do not agree with the request to exempt cargo-only airplanes from the requirements of this AD. Although the fuel tank flammability reduction rule (mentioned previously) provides important safety improvements, it was not intended to address any specific identified unsafe conditions. Instead, that rule provides an additional layer of protection when unidentified and uncorrected fuel tank ignition sources develop. This AD, however, addresses an identified ignition source in the fuel tank system. While the factors mentioned by the operator may reduce the probability that this ignition source will actually cause a fuel tank explosion, they do not justify allowing this known ignition source to continue to exist when practical means exist to eliminate it. We have not changed the AD in this regard.

Actions Since NPRM Was Issued

We have reviewed Airworthiness Limitation (AWL) No. 28-AWL–22 of Subsection G of Section 9, D622N001–

9 Revision December 2008 of the Boeing 757 Maintenance Planning Data (MPD) Document (''Revision December 2008 of the MPD''). In the NPRM we referred to AWL No. 28-AWL–22 of Revision November 2007 of the MPD. AWL No. 28-AWL–22 has not changed. We have revised paragraph (h) of this AD to refer to AWL No. 28-AWL–22 of Revision December 2008 of the MPD; added paragraph (k) to the AD giving credit for AWL No. 28-AWL–22 done in accordance with Revisions January 2007, November 2007, and March 2008 of the MPD; and re-identified the subsequent paragraphs accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 433 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts [1]	Cost per product [1]	Number of U.S.-registered airplanes	Fleet cost [1]
Groups 1–3; measurement, installations, and modification.	8	$80	Between $14,110 and $14,215.	Between $14,750 and $14,855.	432	Between $6,372,000 and $6,417,360.
Group 4; measurements	2	$80	None	$160	1	$160.
AWL Revision	1	$80	None	$80	433	$34,640.

[1] Depending on airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance 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 adding the following new AD:

2009–06–20 Boeing: Amendment 39–15857. Docket No. FAA–2008–0846; Directorate Identifier 2008–NM–045–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, 757–200PF, and 757–300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 757–28A0085, Revision 2, dated December 11, 2007.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the center fuel tank densitometer from overheating and becoming a potential ignition source inside the fuel tank, which, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

Compliance

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

Measurement, Installation, Modifications, Replacement, and Repair

(f) For Groups 1 through 3 airplanes, as identified in Boeing Alert Service Bulletin 757–28A0085, Revision 2, dated December 11, 2007 (''the service bulletin''): Within 60 months after the effective date of this AD, do the measurement, installations, modifications, replacement, and applicable repair by accomplishing all the applicable actions specified in the Accomplishment Instructions of the service bulletin. Do the applicable repair before further flight.

Measure and Repair

(g) For Group 4 airplanes, as identified in Boeing Alert Service Bulletin 757–28A0085, Revision 2, dated December 11, 2007 (''the service bulletin''): Within 60 months after the effective date of this AD, do the measurements and applicable repair by accomplishing all the applicable actions specified in the Accomplishment Instructions of the service bulletin. Do the applicable repair before further flight.

Airworthiness Limitations (AWLs) Revision for AWL No. 28–AWL–22

(h) Concurrently with accomplishing the actions required by paragraphs (f) and (g) of this AD, revise the AWLs section of the Instructions for Continued Airworthiness (ICA) by incorporating AWL No. 28–AWL–22 of Subsection G of Section 9, D622N001–9 Revision December 2008 of the Boeing 757 Maintenance Planning Data (MPD) Document.

No Alternative Critical Design Configuration Control Limitations (CDCCLs)

(i) After accomplishing the action specified in paragraph (h) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k) of this AD.

Credit for Actions Done According to Previous Issues of the Service Information

(j) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 757–28A0085, Revision 1, dated April 16, 2007, are acceptable for compliance with the requirements of paragraphs (f) and (g) of this AD.

(k) Actions done before the effective date of this AD in accordance with AWL No. 28–AWL–22 of Subsection G of Section 9 D622N001–9, Revision January 2007, Revision November 2007, or Revision March 2008 of the Boeing 757 Maintenance Planning Data (MPD) Document, are acceptable for compliance with the requirements of paragraph (h) of this AD.

Terminating Action for AWLs Revision

(l) Incorporating AWL No. 28–AWL–22 into the AWLs section of the ICA in accordance with paragraph (g)(3) of AD 2008–10–11, amendment 39–15517, terminates the action specified in paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office, FAA, ATTN: Jen Pei, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6409; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin 757–28A0085, Revision 2, dated December 11, 2007; and Section 9, D622N001–9 Revision December 2008 of the Boeing 757 Maintenance Planning Data (MPD) Document; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on March 12, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5962 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0224; Directorate Identifier 2007–NM–302–AD; Amendment 39–15852; AD 2009–06–15]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.27 Mark 050 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Fokker Model F.27 Mark 050 airplanes. The existing AD currently requires repetitive visual checks for oil leaks of both engines between the spinner and the engine cowling, and directly behind the heated intake lip of the engine; repetitive inspections for oil leaks at the feathering pump on both engines; and corrective actions if necessary. This new AD retains the requirements of the existing AD. This AD also requires replacing the outlet port (high-pressure) bobbin with a new, improved outlet port (high-pressure) bobbin, which terminates the repetitive visual checks and inspections. This AD results from reports of oil leakage at the engine feathering pump. We are issuing this AD to prevent oil loss from the feathering pump, which could cause the engine to shut down in flight.

DATES: This AD becomes effective April 8, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 8, 2009.

On October 21, 2005 (70 FR 58300, October 6, 2005), the Director of the Federal Register approved the incorporation by reference of certain other publications.

We must receive comments on this AD by April 23, 2009.

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

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

For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD

docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On September 26, 2005, the FAA issued AD 2005–20–21, amendment 39–14317 (70 FR 58300, October 6, 2005). That AD applies to certain Fokker Model F27 Mark 050 airplanes. That AD requires repetitive visual checks for oil leaks of both engines between the spinner and the engine cowling, and directly behind the heated intake lip of the engine; repetitive inspections for oil leaks at the feathering pump on both engines; and corrective actions if necessary. That AD resulted from reports of oil leakage at the engine feathering pump. The actions specified in that AD are intended to prevent oil loss from the feathering pump, which could cause the engine to shut down in flight.

Actions Since AD Was Issued

Since we issued that AD, Fokker Services B.V. conducted a voluntary controlled service introduction of an improved outlet port (high-pressure) bobbin part number (P/N) 638005637 to replace bobbin P/N 638005614.

The preamble to AD 2005–20–21 specifies that we consider the requirements ''interim action.'' That AD explains that we might consider further rulemaking if final action is later identified. The manufacturer now has developed such a modification, and we have determined that further rulemaking is indeed necessary; this AD follows from that determination.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF50–61–025, dated July 4, 2007. The service bulletin describes procedures for replacing the existing outlet port (high-pressure) bobbin with a new, improved outlet port (high-pressure) bobbin. The improved bobbin design uses a gasket that significantly reduces the risk of seal failure caused by extrusion of part of the seal. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, mandated the service information and issued EASA Airworthiness Directive 2007–0203, dated August 1, 2007, to ensure the continued airworthiness of these airplanes in Europe.

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 an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Therefore, we are issuing this AD to supersede AD 2005–20–21. This new AD retains the requirements of the existing AD. This AD also requires replacing the outlet port (high-pressure) bobbin with a new, improved outlet port (high-pressure) bobbin, which terminates the requirements of the AD.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

The following table provides the estimated costs to comply with this AD for any affected airplane that might be imported and placed on the U.S. Register in the future.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost of parts	Cost per airplane
Pre-flight check, per cycle (required by AD 2005–20–21)	1	$80	$0	$80 per cycle.
Detailed inspection, per inspection cycle (required by AD 2005–20–21)	1	80	0	$80 per inspection cycle.
Bobbin replacement (new required action)	8	80	468	$1,108.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0224; Directorate Identifier 2007–NM–302–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 have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the 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 AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14317 (70 FR 58300, October 6, 2005) and adding the following new AD:

2009–06–15 Fokker Services B.V.: Amendment 39–15852. Docket No. FAA–2009–0224; Directorate Identifier 2007–NM–302–AD.

Effective Date

(a) This AD becomes effective April 8, 2009.

Affected ADs

(b) This AD supersedes AD 2005–20–21.

Applicability

(c) This AD applies to Fokker Model F.27 Mark 050 airplanes, certificated in any category, as identified in Fokker Service Bulletin SBF50–61–025, dated July 4, 2007, unless engines that are installed have previously been modified in accordance with Fokker Service Bulletin SBF50–61–024.

Subject

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

Unsafe Condition

(e) This AD results from reports of oil leakage at the engine feathering pump. We are issuing this AD to prevent oil loss from the feathering pump, which could cause the engine to shut down in flight.

Compliance

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

Restatement of the Requirements of AD 2005–20–21:

Pre-Flight Checks

(g) Before the next flight after October 21, 2005 (the effective date of AD 2005–20–21): Do a visual check for oil leaks between the spinner and the engine cowling, and from directly behind the heated intake lip, of both engines, in accordance with Fokker All Operator Message (AOM) AOF50.037 (Ref TS04.57535), dated November 2, 2004. Repeat the visual check thereafter before each flight, until the terminating action required by paragraph (m) of this AD is done. If any leak is found, before further flight, do the action in paragraph (h) of this AD, except as required by paragraph (j) of this AD.

Repetitive Detailed Inspections

(h) Except as required by paragraph (g) of this AD, at the applicable time in paragraph (h)(1) or (h)(2) of this AD: Do a detailed inspection for oil leaks at the feathering pump on both engines and do any applicable corrective action before further flight, except as required by paragraph (j) of this AD. Do all actions in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–61–023, dated November 3, 2004. Repeat the detailed inspection thereafter at the applicable interval in paragraph (h)(1) or (h)(2) of this AD, until the terminating action required by paragraph (m) of this AD is done.

(1) For airplanes identified in paragraph 1.A. ''Effectivity,'' sub-paragraph (1) of Fokker Service Bulletin SBF50–61–023, dated November 3, 2004: Do the first inspection before the next flight after October 21, 2005, and repeat the inspection thereafter before each flight.

(2) For airplanes identified in paragraph 1.A. ''Effectivity,'' sub-paragraph (2) of Fokker Service Bulletin SBF50–61–023, dated November 3, 2004: Do the first inspection within 32 flight hours after October 21, 2005, and repeat the inspection thereafter at intervals not to exceed 32 flight hours.

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

No Reporting Requirement

(i) Although Fokker AOM AOF50.037 (Ref TS04.57535), dated November 2, 2004, specifies that operators should report cases of oil leakage and send failed O-rings to Fokker Services B.V., this AD does not include that requirement.

New Requirements of This AD

New Corrective Action

(j) As of the effective date of this AD: If during any inspection required by paragraph (g) or (h) of this AD, oil leakage is found at the feathering pump mounting pad of an engine, before further flight, replace bobbin part number (P/N) 638005614 with bobbin P/N 638005637 and install a gasket on the feathering pump of that engine, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–61–025, dated July 4, 2007.

(k) After accomplishing the actions in paragraph (j), no person may replace an engine with one that has not been modified according to Fokker Service Bulletin SBF50–61–025, dated July 4, 2007.

(l) As of 24 months after the effective date of this AD, no person may install an engine on any airplane, unless it has been modified according to Fokker Service Bulletin SBF50–61–025, dated July 4, 2007.

Terminating Action

(m) Within 24 months after the effective date of this AD: Replace the outlet port (high-pressure) bobbin P/N 638005614 with a new, improved outlet port (high-pressure) bobbin P/N 638005637 and install a gasket on the feathering pump of that engine, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–61–025, dated July 4, 2007. Doing the replacement required by this paragraph on both engines terminates the requirements of this AD.

Special Flight Permit

(n) 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), are not allowed.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, International Branch, ANM–116, 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:* Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

(2) Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(p) European Aviation Safety Agency Airworthiness Directive 2007–0203, dated August 1, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(q) You must use the service information identified in Table 1 of this AD, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE

Service information	Date
Fokker All Operator Message AOF50.037 (Ref TS04.57535)	November 2, 2004.
Fokker Service Bulletin SBF50–61–023	November 3, 2004.
Fokker Service Bulletin SBF50–61–025	July 4, 2007.

(1) The Director of the Federal Register approved the incorporation by reference of Fokker Service Bulletin SBF50–61–025, dated July 4, 2007, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On October 21, 2005 (70 FR 58300, October 6, 2005), the Director of the Federal Register approved the incorporation by reference of Fokker Service Bulletin SBF50–61–023, dated November 3, 2004; and Fokker All Operator Message AOF50.037 (Ref TS04.57535), dated November 2, 2004.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5958 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1103; Directorate Identifier 2008–NM–048–AD; Amendment 39–15846; AD 2009–06–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 and 727–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 727–100 and 727–200 series airplanes. This AD requires repetitive internal and external high frequency eddy current, mid frequency eddy current, low frequency eddy current, and magneto optic imaging inspections to detect cracks, corrosion, delamination, and materials loss in the lower fastener row of the lower skin and the upper fastener row of the upper skin, and corrective actions if necessary. This AD results from a report of decompression in a Boeing Model 737 airplane at flight level 290. We are issuing this AD to detect and correct scratches and excessive reduction in material thickness from excessive blend-out or corrosion, which could lead to premature cracking in the lap joint. Such cracking could adversely affect the structural integrity of the airplane.

DATES: This AD is effective April 28, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 28, 2009.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 727–100 and 727–200 series airplanes. That NPRM was published in the **Federal Register** on October 17, 2008 (73 FR 61747). That NPRM proposed to require repetitive internal and external high frequency eddy current, mid frequency eddy

current, low frequency eddy current, and magneto optic imaging inspections to detect cracks, corrosion, delamination, and materials loss in the lower fastener row of the lower skin and the upper fastener row of the upper skin, and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter, Boeing, supports the NPRM.

Clarification of Paragraph (f)(1) of This AD

We have revised paragraph (f)(1) of this AD to clarify the exception to the compliance times in Boeing Alert Service Bulletin 727–53A0223, dated March 28, 2002.

Conclusion

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

Costs of Compliance

We estimate that this AD affects 73 airplanes of U.S. registry. We also estimate that it would take 56 work hours per product to comply with this AD. The average labor rate is $80 per work hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $327,040, or $4,480 per product, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance 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 adding the following new AD:

2009–06–10 Boeing: Amendment 39–15846. Docket No. FAA–2008–1103; Directorate Identifier 2008–NM–048–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 727–100 and 727–200 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 727–53A0223, dated March 28, 2002.

Unsafe Condition

(d) This AD results from a report of decompression in a Boeing Model 737 airplane at flight level 290. We are issuing this AD to detect and correct scratches and excessive reduction in material thickness from excessive blend-out or corrosion, which could lead to premature cracking in the lap joint. Such cracking could adversely affect the structural integrity of the airplane.

Compliance

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

Inspections and Corrective Actions

(f) Except as provided by paragraphs (f)(1), (f)(2), and (f)(3) of this AD: At the applicable compliance times and repeat intervals listed in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 727–53A0223, dated March 28, 2002 (''the service bulletin''), do repetitive internal and external high frequency eddy current, mid frequency eddy current, low frequency eddy current, and magneto optic imaging inspections to detect cracks, corrosion, delamination, and materials loss in the lower fastener row of the lower skin and the upper fastener row of the upper skin, and corrective actions by accomplishing all the applicable actions specified in the Accomplishment Instructions of the service bulletin. The applicable corrective actions must be done before further flight.

(1) Paragraph 1.E. of Boeing Alert Service Bulletin 727–53A0223, dated March 28, 2002, has the table column titled, ''Airplane Flight Cycles at time of SB release.'' While the service bulletin refers to the flight cycles accumulated on the airplane at the ''time of SB release,'' this AD specifies the flight cycles accumulated on the airplane ''as of the effective date of this AD.''

(2) Where paragraph 1.E., ''Compliance,'' of the service bulletin specifies ''Initial Inspection Threshold From SB Rel Upper and Lower Skin,'' this AD requires compliance within the specified compliance times after the effective date of this AD.

(3) Where paragraph 1.E., ''Compliance,'' of the service bulletin specifies ''Repeat every * * *,'' this AD requires compliance at intervals not to exceed the specified flight cycles or years.

No Reporting

(g) Although Boeing Alert Service Bulletin 727–53A0223, dated March 28, 2002, specifies to submit information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, in the FAA Flight Standards District Office (FSDO), or lacking a principal inspector, your local FSDO. The AMOC

approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 727–53A0223, dated March 28, 2002, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5957 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0898; Directorate Identifier 2007–NM–200–AD; Amendment 39–15856; AD 2009–06–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and 767–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 767–200 and 767–300 series airplanes. This AD requires detailed inspections of the aft pressure bulkhead for damage, mid-frequency eddy current (MFEC) and low frequency eddy current (LFEC) inspections of radial web lap splices, tear strap splices, and super tear strap splices for cracking, and corrective actions if necessary. This AD results from analysis that indicates fatigue cracks of the web lap splice, tear strap splice, or super tear strap splice of the aft bulkhead are expected to occur on certain Boeing Model 767–200 and 767–300 series airplanes. We are issuing this AD to detect and correct fatigue cracks of the aft pressure bulkhead, which could result in rapid decompression of the passenger compartment and possible damage or interference with airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

DATES: This AD is effective April 28, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 28, 2009.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 767–200 and 767–300 series airplanes. That NPRM was published in the **Federal Register** on August 21, 2008 (73 FR 49366). That NPRM proposed to require detailed inspections of the aft pressure bulkhead for damage, mid-frequency eddy current (MFEC) and low frequency eddy current (LFEC) inspections of radial web lap splices, tear strap splices, and super tear strap splices for cracking, and corrective actions if necessary.

Comments

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

Request To Refer to AD 2003–18–10

Boeing and United Airlines ask that we refer to AD 2003–18–10, amendment 39–13301 (68 FR 53503, September 11, 2003) in the AD.

Boeing states that AD 2003–18–10 requires a revision of the Boeing 767 Maintenance Planning Data (MPD) Document D622T001–9 to incorporate the October 2002 revision, and Appendix B of the Boeing 767 MPD Document D622T001 to incorporate the December 2002 revision, for Model 767 line numbers 1–895. Boeing adds that the inspection requirements of Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007, supersede the Boeing 767 MPD Document D622T001–9 and Document D622T001, Appendix B, inspections for Structural Significant Items (SSI) 53–80–I01B, C, D, and E. Boeing concludes that the NPRM affects the requirements of AD 2003–18–10 and asks that a reference to that AD be added to the ''Affected ADs'' paragraph of the NPRM.

United Airlines (UAL) states that a reference to AD 2003–18–10 should be included because paragraph 1.F. of Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007, states that the Accomplishment Instructions ''are approved as an alternative method of compliance (AMOC) to the inspections of SSI 53–80–I01B, C, D, and E of Boeing 767 MPD Document D622T001–9 and Appendix B of Boeing 767 MPD Document D622T001 as required by paragraph (d) of Airworthiness Directive (AD) 2003–18–10.'' In addition, due to the AD-related SSIs, UAL states that the NPRM should include the SSI numbers specified in Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007.

We do not agree that AD 2003–18–10 should be referred to in this AD. The ''Affected ADs'' paragraph is used to refer to the AD number of supersedure and revision ADs only; we consider AD 2003–18–10 a ''related AD,'' not a supersedure or revision. AD 2003–18–10 applies to certain Boeing Model 767 series airplanes. That AD currently requires revising the Airworthiness Limitations Section of the MPD Document (767 Airworthiness Limitations Instructions (ALI)). AD 2003–18–10 also incorporates into the ALI certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSEs). AD 2003–18–10 is already referred to in Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007, and since that service bulletin is the source of service information for accomplishing the required actions in this AD it is not necessary to refer to AD 2003–18–10 in this AD. We have made no change to the AD in this regard.

Requests To Clarify the Alternative Method of Compliance (AMOC) Paragraph Relative to AD 2003–18–10

Boeing asks that we clarify the AMOC paragraph to ensure that AMOCs for repairs are required only for the requirements of the NPRM, not the requirements of AD 2003–18–10 that are specifically superseded in paragraph 1.F. ''Approval,'' of Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007. Boeing states that the inspections in Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007, supersede the Boeing 767 MPD Document D622T001–9 and Document D622T001, Appendix B, inspections for SSI 53–80–I01B, C, D, and E. Boeing adds that if cracks are found and repaired, an AMOC to the superseded inspections of AD 2003–18–10 specifically referenced in the above sentence is not required or applicable. Boeing asks that paragraph (g)(3) of the NPRM be changed to add the following: Alternative inspections for repair configurations require an AMOC to this AD only, not the requirements of AD 2003–18–10, which have been superseded by the inspection in Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007. This AMOC applies only to the areas inspected as specified in Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007.

Delta Airlines states that all repairs that would receive an AMOC to any of the repetitive inspections required by this AD (in the repaired area) should automatically be considered as having received an AMOC to the respective and equivalent inspections required by AD 2003–18–10. Delta adds that this is for SSIs 53–80–I01B, C, D, and E, as specified in paragraph 1.F. of Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007. Delta notes that the operator should not have to apply for such an AMOC.

We do not agree that an AMOC is not necessary for inspection requirements in areas repaired as required by AD 2003–18–10. The repairs required by this AD affect the ability to accomplish certain inspections required by AD 2003–18–10, resulting in the need for an AMOC to that AD. The AMOC provided in paragraph 1.F. of Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007, allows for only the inspections in Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007, to be an AMOC to certain inspections in AD 2003–18–10. That AMOC does not include approval of inspections as a separate AMOC to this AD as a result of a repair in repaired areas. However, we agree that inspections of repaired areas, if approved as an AMOC for the inspection requirements of this AD, should also be approved as an AMOC to the inspection required by AD 2003–18–10 for the repaired areas only. Additionally, we agree that the AMOC paragraph should be clarified relative to inspections of repaired areas as required by AD 2003–18–10. We have added paragraph (g)(4) to this AD for clarification and to provide this AMOC approval.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 244 airplanes of the affected design in the worldwide fleet. This AD affects about 84 airplanes of U.S. registry. The actions take about 31 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $208,320, or $2,480 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance 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 adding the following new AD:

2009–06–19 Boeing: Amendment 39–15856. Docket No. FAA–2008–0898; Directorate Identifier 2007–NM–200–AD.

Effective Date

(a) This airworthiness directive (AD) is effective April 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200 and 767–300 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007.

Unsafe Condition

(d) This AD results from analysis that indicates fatigue cracks of the web lap splice, tear strap splice, or super tear strap splice of the aft bulkhead are expected to occur on certain Boeing Model 767–200 and 767–300 series airplanes. We are proposing this AD to detect and correct fatigue cracks of the aft pressure bulkhead, which could result in rapid decompression of the passenger compartment and possible damage or interference with airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

Compliance

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

Inspections and Applicable Related Investigative and Corrective Actions

(f) Except as provided by paragraphs (f)(1) and (f)(2) of this AD: At the applicable compliance time and repeat intervals listed in Tables 1 and 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007, do detailed inspections of the aft pressure bulkhead for damage, mid-frequency eddy current (MFEC) and low frequency eddy current (LFEC) inspections of radial web lap splices, tear strap splices, and super tear strap splices for cracking, and applicable corrective actions, by accomplishing all the applicable actions specified in the Accomplishment Instructions of the service bulletin.

(1) Where Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007, specifies a compliance time after the date on that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007, specifies a compliance time of ''As given by Boeing'' or to contact Boeing for the appropriate action, this AD requires, before further flight, inspections of the area of repair and repair of any damaged/cracked part, as applicable, using a method approved in accordance with the procedures specified in paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton, Washington telephone (425) 917–6421; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) Inspections of repaired areas approved as an AMOC for the inspection requirements of this AD are also approved as an AMOC to the inspections for the repaired areas only as required by paragraph (d) of AD 2003–18–10.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 767–53A0147, dated August 16, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on March 12, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5961 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1361; Directorate Identifier 2008–NM–140–AD; Amendment 39–15858; AD 2009–06–21]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –106 Airplanes, and Model DHC–8–200, –300, and –400 Series Airplanes

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

ACTION: Final rule.

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

A fuselage spoiler cable disconnect sensing device was installed in production on later DHC–8 Series 100/200/300 aircraft, and on all DHC–8 Series 400 aircraft. On earlier DHC–8 Series 100/200/300 aircraft, its installation was mandated by [Canadian] Airworthiness Directive CF–2006–13 [which corresponds to FAA AD 2007–21–16].

However, several incorrectly assembled spoiler cable disconnect sensing devices have recently been discovered on in-service aircraft. A pulley and plastic spacer had been inadvertently interchanged during assembly of the device in production, resulting in the spoiler cable sliding on the spacer rather than on the pulley, as designed.

Continued operation with an incorrectly assembled spoiler cable disconnect sensing device could result in impaired operation of the sensing device and/or an eventual fuselage spoiler cable disconnect, with possible reduced controllability of the aircraft.

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

DATES: This AD becomes effective April 28, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 28, 2009.

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

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 12, 2009 (74 FR 1164). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> A fuselage spoiler cable disconnect sensing device was installed in production on later DHC–8 Series 100/200/300 aircraft, and on all DHC–8 Series 400 aircraft. On earlier DHC–8 Series 100/200/300 aircraft, its installation was mandated by [Canadian] Airworthiness Directive CF–2006–13 [which corresponds to FAA AD 2007–21–16].
>
> However, several incorrectly assembled spoiler cable disconnect sensing devices have recently been discovered on in-service aircraft. A pulley and plastic spacer had been inadvertently interchanged during assembly of the device in production, resulting in the spoiler cable sliding on the spacer rather than on the pulley, as designed.
>
> Continued operation with an incorrectly assembled spoiler cable disconnect sensing device could result in impaired operation of the sensing device and/or an eventual fuselage spoiler cable disconnect, with possible reduced controllability of the aircraft.

Required actions include inspecting the fuselage spoiler cable disconnect sensing device and, if necessary, inspecting components for wear and damage, replacing worn or damaged components, and correctly re-assembling the sensing device. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Change to the NPRM

We clarified the DHC–8 model designation in paragraph (f)(2) of the AD. That designation was missing in the NPRM.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 145 products of U.S. registry. We also estimate that it will take 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $11,600, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–06–21 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–15858. Docket No. FAA–2008–1361; Directorate Identifier 2008–NM–140–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following Bombardier Model DHC–8 airplanes, certificated in any category.

(1) Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes, serial numbers 003 through 644 inclusive.

(2) Model DHC–8–400, –401 and –402 series airplanes, serial numbers 4003, 4004, 4006, and 4008 through 4164 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

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

A fuselage spoiler cable disconnect sensing device was installed in production on later DHC–8 Series 100/200/300 aircraft, and on all DHC–8 Series 400 aircraft. On earlier DHC–8 Series 100/200/300 aircraft, its installation was mandated by [Canadian] Airworthiness Directive CF–2006–13 [which corresponds to FAA AD 2007–21–16].

However, several incorrectly assembled spoiler cable disconnect sensing devices have recently been discovered on in-service aircraft. A pulley and plastic spacer had been inadvertently interchanged during assembly of the device in production, resulting in the spoiler cable sliding on the spacer rather than on the pulley, as designed.

Continued operation with an incorrectly assembled spoiler cable disconnect sensing device could result in impaired operation of the sensing device and/or an eventual fuselage spoiler cable disconnect, with possible reduced controllability of the aircraft.

Required actions include inspecting the fuselage spoiler cable disconnect sensing device and, if necessary, inspecting components for wear and damage, replacing worn or damaged components, and correctly re-assembling the sensing device.

Actions and Compliance

(f) Unless already done, do the following.

(1) For Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes, serial numbers 003 through 561 inclusive: Do the actions required by paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable, in accordance with paragraph 3.B., Part A, of Bombardier Service Bulletin 8–27–107, dated October 16, 2007.

(i) For airplanes on which fuselage spoiler cable disconnect sensing device, Modsum 8Q100898, has been installed as of the effective date of this AD: Within 1,000 flight hours after the effective date of this AD, inspect the fuselage spoiler cable disconnect sensing device for correct assembly.

(ii) For airplanes on which fuselage spoiler cable disconnect sensing device, Modsum 8Q100898, has not been installed as of the effective date of this AD: Concurrently with the installation of Modsum 8Q100898, inspect the fuselage spoiler cable disconnect sensing device for correct assembly.

Note 1: AD 2007–21–16, amendment 39–15234, requires the installation of Modsum 8Q100898.

(2) For Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes, serial numbers 562 through 644 inclusive: Within 1,000 flight hours after the effective date of this AD, inspect the fuselage spoiler cable disconnect sensing device for correct assembly in accordance with paragraph 3.B., Part A, of Bombardier Service Bulletin 8–27–107, dated October 16, 2007.

Note 2: The fuselage spoiler cable disconnect sensing device was installed in production on the airplanes identified in paragraph (f)(2) of this AD.

(3) For Bombardier Model DHC–8–400, –401, and –402 series airplanes, serial numbers 4003, 4004, 4006, and 4008 through 4164 inclusive: Within 1,000 flight hours after the effective date of this AD, inspect the fuselage spoiler cable disconnect sensing device for correct assembly in accordance with paragraph 3.B., Part A, of Bombardier Service Bulletin 84–27–34, dated October 3, 2007.

Note 3: The fuselage spoiler cable disconnect sensing device was installed in production on the airplanes identified in paragraph (f)(3) of this AD.

(4) For all airplanes: If an incorrectly assembled sensing device is detected during any inspection required by paragraph (f)(1), (f)(2), or (f)(3) of this AD, before further flight, inspect the components, replace worn or damaged components, and correctly re-assemble the sensing device. Do the actions in accordance with paragraph 3.B., Part B, of Bombardier Service Bulletin 8–27–107, dated October 16, 2007; or Bombardier Service Bulletin 84–27–34, dated October 3, 2007; as applicable.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No difference.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Parrillo, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531. 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 Canadian Airworthiness Directive CF–2008–28, dated July 10, 2008; Bombardier Service Bulletin 84–27–34, dated October 3, 2007; and Bombardier Service Bulletin 8–27–107, dated October 16, 2007; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 8–27–107, dated October 16, 2007; and Bombardier Service Bulletin 84–27–34, dated October 3, 2007; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on March 12, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5964 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1327; Directorate Identifier 2008–NM–161–AD; Amendment 39–15859; AD 2009–06–22]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing

airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> An A320 aircraft experienced an event where it was not possible to open the reinforced cockpit door, even after power had been removed from the aircraft. Investigation has identified that the cockpit door latch/striker assembly may have overheated, causing permanent internal damage prior to being electrically isolated by the internal thermal fuse. This condition, in case of a rapid decompression in the cockpit, would prevent the necessary unlocking/opening of the door, which may lead to failure of the airplane structure.
>
> * * * * *

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

DATES: This AD becomes effective April 28, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 28, 2009.

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 23, 2008 (73 FR 78670). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> An A320 aircraft experienced an event where it was not possible to open the reinforced cockpit door, even after power had been removed from the aircraft. Investigation has identified that the cockpit door latch/striker assembly may have overheated, causing permanent internal damage prior to being electrically isolated by the internal thermal fuse. This condition, in case of a rapid decompression in the cockpit, would prevent the necessary unlocking/opening of the door, which may lead to failure of the airplane structure.
>
> To prevent this, an improved strike package/door bolting system, including a Polymer Positive Temperature Coefficient (PPTC) element (overheat protection) was introduced by Airbus Modification 35219 in production and modification 35218 (Service Bulletin A320–25–1444) in-service. The PPTC is a resettable thermistor and is installed on the frame of the electrically-operated cockpit door latch/striker assembly.
>
> The in-service implementation of this modification was originally managed by an Airbus campaign but the rate of installation by operators has not met the expected timescales, making mandatory action necessary to address this.
>
> For the reasons described above, this AD requires the installation of improved cockpit door latch/striker assemblies.

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

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 620 products of U.S. registry. We also estimate that it will take 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $297,600, or $480 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–09–22 Airbus: Amendment 39–15859. Docket No. FAA–2008–1327; Directorate Identifier 2008–NM–161–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111, –112, –121, and –122; A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–111, –211, –212, –214, –231, –232, –233; and A321–111, –112, –131, –211, –212, –213, –231, and –232 series airplanes; certificated in any category; equipped with a cockpit door latch/striker assembly having part number AR4714–1 or AR4714–3.

Subject

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

Reason

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

An A320 aircraft experienced an event where it was not possible to open the reinforced cockpit door, even after power had been removed from the aircraft. Investigation has identified that the cockpit door latch/striker assembly may have overheated, causing permanent internal damage prior to being electrically isolated by the internal thermal fuse. This condition, in case of a rapid decompression in the cockpit, would prevent the necessary unlocking/opening of the door, which may lead to failure of the airplane structure.

To prevent this, an improved strike package/door bolting system, including a Polymer Positive Temperature Coefficient (PPTC) element (overheat protection) was introduced by Airbus Modification 35219 in production and modification 35218 (Service Bulletin A320–25–1444) in-service. The PPTC is a resettable thermistor and is installed on the frame of the electrically-operated cockpit door latch/striker assembly.

The in-service implementation of this modification was originally managed by an Airbus campaign but the rate of installation by operators has not met the expected timescales, making mandatory action necessary to address this.

For the reasons described above, this AD requires the installation of improved cockpit door latch/striker assemblies.

Actions and Compliance

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

(1) Within 8 months after the effective date of this AD: Replace all cockpit door latch/striker assemblies having part number AR4714–1 or AR4714–3 with modified units in accordance with Airbus Service Bulletin A320–25–1444, Revision 02, dated August 1, 2006 (Airbus Modification 35218).

(2) Previous accomplishment of the replacement before the effective date of this AD in accordance with Airbus Service Bulletin A320–25–1444, dated April 29, 2005; or Revision 01, dated July 19, 2005; meets the requirements of paragraph (f)(1) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

(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: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; 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 European Aviation Safety Agency Airworthiness Directive 2008–0151, dated August 5, 2008; and Airbus Service Bulletin A320–25–1444, Revision 02, dated August 1, 2006; for related information.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A320–25–1444, Revision 02, dated August 1, 2006 to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on March 12, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5959 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1043; Directorate Identifier 2008–NM–036–AD; Amendment 39–15845; AD 2009–06–09]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH Dornier Model 328–100 Airplanes

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

ACTION: Final rule.

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

During overhaul on a Dornier 328–100 landing gear unit, parts of the MLG (main

landing gear) main body and trailing arm bushings have been found corroded. Investigation showed that over time, these bushings can migrate, creating the risk of corrosion in adjacent areas. Such corrosion, if not detected, could cause damage to the MLG, possibly resulting in MLG functional problems or failure.

* * * * *

Functional problems or failure of the MLG could result in the inability of the MLG to extend or retract. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective April 28, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 28, 2009.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 30, 2008 (73 FR 56763). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During overhaul on a Dornier 328–100 landing gear unit, parts of the MLG (main landing gear) main body and trailing arm bushings have been found corroded. Investigation showed that over time, these bushings can migrate, creating the risk of corrosion in adjacent areas. Such corrosion, if not detected, could cause damage to the MLG, possibly resulting in MLG functional problems or failure.
>
> Based on these findings, the existing mandatory retrofit limitation (as required by Airworthiness Limitations Document under Section E ''Mandatory Retrofit Items'' since 16 September 1998) for the MLG bushings at 15,000 FC (flight cycles) has been amended with ''* * * or 6 calendar years time-in-service (TIS), whichever occurs first''.
>
> For the reasons described above, this [EASA] Airworthiness Directive requires the implementation of the revised mandatory retrofit limitation and modification of MLG bushings that have exceeded the new limit. Functional problems or failure of the MLG could result in the inability of the MLG to extend or retract. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Clarify Certain Language

The commenter, Patrick Brady, has a concern about proposed language in the compliance section that may lead to confusion for operators. The commenter asks that paragraph (f)(1)(ii) of the NPRM be changed to clarify that the requirement for replacing the bushings is applicable only to bushings that were installed before issuance of Dornier Service Bulletin SB–328–32–245, Revision 2, dated November 21, 2007; and Messier-Dowty Service Bulletin 800–32–014, Revision 1, dated July 19, 1999. The commenter adds that if the bushings were replaced in accordance with the referenced service bulletins, and bushings with post-service bulletin part numbers were installed, no additional requirement to replace the bushings should be imposed.

We agree that further clarification is necessary; however, we do not agree that it is necessary to change the language specified in paragraph (f)(1)(ii) of this AD. If new bushings with post-service bulletin part numbers were installed in accordance with Dornier Service Bulletin SB–328–32–245, Revision 2, dated November 21, 2007; and Messier-Dowty Service Bulletin 800–32–014, Revision 1, dated July 19, 1999; and a records check has been done which verifies that the bushings were replaced with new bushings, there is no requirement in this AD to replace those bushings. In addition, paragraph (f) of the AD specifies to do the actions ''unless already done.'' We have made no change to the AD in this regard.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 13 products of U.S. registry. We also estimate that it will take about 28 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $10,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $159,120, or $12,240 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–06–09 328 Support Services GMBH (Formerly, AvCraft Aerospace GmbH, Formerly Fairchild Dornier GmbH, Formerly Dornier Luftfahrt GmbH): Amendment 39–15845. Docket No. FAA–2008–1043; Directorate Identifier 2008–NM–036–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective April 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to 328 Support Services GmbH Dornier Model 328–100 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

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

During overhaul on a Dornier 328–100 landing gear unit, parts of the MLG (main landing gear) main body and trailing arm bushings have been found corroded. Investigation showed that over time, these bushings can migrate, creating the risk of corrosion in adjacent areas. Such corrosion, if not detected, could cause damage to the MLG, possibly resulting in MLG functional problems or failure.

Based on these findings, the existing mandatory retrofit limitation (as required by Airworthiness Limitations Document under Section E ''Mandatory Retrofit Items'' since 16 September 1998) for the MLG bushings at 15,000 FC (flight cycles) has been amended with ''* * * or 6 calendar years time-in-service (TIS), whichever occurs first''.

For the reasons described above, this [EASA] Airworthiness Directive requires the implementation of the revised mandatory retrofit limitation and modification of MLG bushings that have exceeded the new limit.

Functional problems or failure of the MLG could result in the inability of the MLG to extend or retract.

Actions and Compliance

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

(1) Modify the MLG main body and trailing arm bushings at the applicable time specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD, or within 12 months after the effective date of this AD, whichever occurs later. Do the modification in accordance with the instructions of Dornier Service Bulletin SB–328–32–245, Revision 2, dated November 21, 2007; and Messier-Dowty Service Bulletin 800–32–014, Revision 1, dated July 19, 1999.

(i) For airplanes on which the bushings have not been replaced as of the effective date of this AD: Before the MLG accumulates 15,000 flight cycles or 6 years, whichever occurs first.

(ii) For airplanes on which the bushings have been replaced as of the effective date of this AD: Before the MLG exceeds 15,000 flight cycles or 6 years after replacement of the bushings, whichever occurs first.

(2) Within 1 month after the effective date of this AD: Revise the Airworthiness Limitations (AWL) section of the Instructions for Continued Airworthiness by incorporating the information in Dornier 328 Temporary Revision (TR) ALD–084, dated November 7, 2005, into Section E, ''Mandatory Retrofit Items'' of the Dornier 328 Airworthiness Limitations Document (ALD).

Note 1: The actions required by paragraph (f)(2) of this AD may be done by inserting a copy of Dornier 328 TR ALD–084, dated November 7, 2005, into Section E of the Dornier 328 ALD.

(3) After doing the replacement required by paragraph (f)(1) of this AD, no person may install, on any airplane, a MLG unit as a replacement part, unless it has been modified in accordance with paragraph (f)(1) of this AD.

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, 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:* Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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 European Aviation Safety Agency Airworthiness Directive 2008–0009, dated January 11, 2008; Messier-Dowty Service Bulletin 800–32–014, Revision 1, dated July 19, 1999; Dornier Service Bulletin SB–328–32–245, Revision 2, dated November 21, 2007; and Dornier 328 TR ALD–084, dated November 7, 2005, to the Dornier 328 Airworthiness Limitations Document; for related information.

Material Incorporated by Reference

(i) You must use the service information contained in Table 1 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Dornier 328 Temporary Revision ALD–084 to the Dornier 328 Airworthiness Limitations Document.	Original	November 7, 2005.
Dornier Service Bulletin SB–328–32–245	2	November 21, 2007.
Messier-Dowty Service Bulletin 800–32–014	1	July 19, 1999.

Messier-Dowty Service Bulletin 800–32–014, Revision 1, dated July 19, 1999, contains the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1, 6–8, 10, 12	1	July 19, 1999.
2–5, 9, 11, 13, 14	Original	January 18, 1999.

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

(2) For Dornier service information identified in this AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; e-mail *gsc.op@328support.de;* Internet *http://www.328support.de.*

(3) For Messier-Dowty service information identified in this AD, contact Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, Virginia 20166–8910; telephone 703–450–8233; fax 703–404–1621; Internet *https://techpubs.services.messier-dowty.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–5955 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25390; Directorate Identifier 2005–NM–224–AD; Amendment 39–15844; AD 2009–06–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 767 airplanes. This AD requires repetitive inspections for cracking of the wing skin, and related investigative/corrective actions if necessary. This AD results from reports of cracks found in the lower wing skin originating at the forward tension bolt holes of the aft pitch load fitting. We are issuing this AD to detect and correct cracking in the lower wing skin for the forward tension bolt holes at the aft pitch load fitting, which could result in a fuel leak and reduced structural integrity of the airplane.

DATES: This AD becomes effective April 28, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 28, 2009.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com*; Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917-6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 767 airplanes. That supplemental NPRM was published in the **Federal Register** on May 23, 2008 (73 FR 30009). That supplemental NPRM proposed to require repetitive inspections for cracking of the wing skin, and related investigative/corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the Supplemental NPRM

Boeing concurs with the contents of the proposed rule.

Request To Revise Compliance Time in Paragraph (f)(1) of the Supplemental NPRM

Continental Airlines requests that we change the compliance time in paragraph (f)(1) of the supplemental NPRM from ''prior to the accumulation of 10,000 total flight cycles or 30,000 total flight hours, whichever occurs first'' to ''prior to the accumulation of 10,000 total flight cycles or 50,000 total flight hours, whichever occurs first.'' Continental states that the reported cracks have been on airplanes with moderate (13,000+) to high (20,000+) to very high (37,000+) total flight cycles. According to Continental, in all cases but one, all of the findings have been on airplanes with moderate (44,000+) to high (67,000+) flight hours. Further, Continental states that in the case of the one airplane with high flight cycles (20,000+) and low flight hours (less than 23,000 hours), cyclic stresses have played a major role.

We disagree with the request to change the compliance time. The manufacturer set the flight-hour threshold based on equivalent fatigue damage caused by flight hours as compared to flight cycles. The threshold for inspection is set below where the cracking is found. Setting the threshold at 50,000 total flight hours would set the threshold above five of eight reports. We have not changed the AD in this regard. However, under the provisions of paragraph (o) of this AD, we will consider requests for approval of an alternative compliance time if sufficient data are submitted to substantiate that the change in compliance time would provide an acceptable level of safety.

Request To Revise Compliance Time in Paragraph (h) of the Supplemental NPRM

UPS requests that we change the flight-cycle threshold for the inspection specified in paragraph (h) of the supplemental NPRM. UPS recommends that the compliance time be 16,500 flight cycles from the last accomplishment of the inspection required by paragraph (g) of this AD, rather than 3,000 flight cycles. UPS states that the open-hole high frequency eddy current (HFEC) inspection is set up such that a crack originating at the forward tension bolt hole of the aft pitch load fitting would be detected at the crack initiation. UPS adds that the corresponding interval of 16,500 flight cycles is such that if a crack were to develop immediately following the initial bolt open-hole HFEC inspection, it would not grow to a critical size before detection at the next inspection interval of 16,500 flight cycles.

We disagree with the request to revise the compliance time. The external inspection specified in Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007, will not detect cracks that are hidden by the fitting, but will detect these cracks only when a crack grows beyond the fitting. In particular, the Part 1 inspection will not detect large cracks growing aft that are hidden by the fitting. Also, there is a preload in the skin due to ''clamp-up stress'' from the bolts. These clamp-up stresses add to uncertainty in the analysis. The 3,000-flight-cycle threshold will allow for additional opportunities to detect possible cracks once they grow beyond the fitting. In addition, the open-hole HFEC inspection does not detect cracks until they reach a detectable crack length. We have not changed the AD in this regard. However, under the provisions of paragraph (o) of this AD, we will consider requests for approval of an alternative compliance time if sufficient data are submitted to substantiate that the change in compliance time would provide an acceptable level of safety.

Request To Change ''and'' to ''or'' in Paragraph (g)(1) of the Supplemental NPRM

UPS requests that we change the ''and'' in paragraph (g)(1) of the supplemental NPRM to an ''or.'' That part of paragraph (g)(1) of the supplemental NPRM states, ''Do the inspection at the later time specified in paragraph (g)(1)(i) and (g)(1)(ii) of this AD.'' UPS interprets that the intent of paragraph (g)(1)(ii) of the supplemental NPRM is to allow airplanes that are approaching or have surpassed the paragraph (g)(1)(i) threshold a reasonable timeframe to accomplish Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007. UPS also states that similar paragraphs elsewhere in the NPRM use ''or'' rather than ''and.''

We agree with the request to change the ''and'' to an ''or'' for the reasons stated. We have revised paragraph (g)(1) of this AD accordingly. We have also revised paragraph (g)(2) of this AD to make the same change for consistency.

Request To Limit Wording to Repaired Fastener Holes Only

UPS requests that we revise the wording in paragraph (j)(1) of the supplemental NPRM to change ''the repaired wing only'' to ''repaired fastener hole(s) only.'' UPS states that, as the supplemental NPRM is written, a freeze plug repair on either the inboard or outboard forward tension bolt hole of the aft pitch load fitting would end the repetitive inspections of paragraphs (f) and (g) of the supplemental NPRM for both the inboard and outboard forward tension bolt holes on that wing.

We disagree with the request to change the wording in paragraph (j)(1) of this AD. Our intention is that after doing the freeze plug repair specified in paragraph (j)(1) of this AD, the inspections specified in paragraphs (f) and (g) of this AD need not be done for the repaired wing and not just for the repaired fastener hole(s) as the commenter suggests. Instead of the inspections required by paragraphs (f) and (g) of this AD, the inspections required by paragraph (k) of this AD must be done. We have not changed the AD in this regard.

Request To Expand Inspection Area in Service Bulletin

Continental requests that Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007 (''the service bulletin''), include instructions for what to do if an operator finds cracks in the expanded area of inspection beyond the two bolt holes; or, as an option, a statement to contact Boeing for further disposition. Continental points out that Part 2 of the Work Instructions in the service bulletin provides disposition for any finding around the two bolt hole areas only.

We disagree that instructions need to be added. The inspections specified in Part 1 of the service bulletin are accomplished as given in Figure 3 of the service bulletin. The accomplishment instructions in Part 1 of the service bulletin give instructions for repairing any crack before further flight. The instructions in Figure 3 of the service bulletin specify that operators should contact ''The Boeing Company'' for repair instructions. Paragraph (l) of this AD states that where the service bulletin specifies to contact Boeing for appropriate action, operators must repair the cracking using a method approved in accordance with the procedures specified in paragraph (o) of this AD. We have not changed the AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the

economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 918 airplanes of the affected design in the worldwide fleet, and about 387 airplanes of U.S. Registry. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Repetitive inspections, per inspection cycle (Part 1).	8	None	$640, per inspection cycle.	$247,680.
Inspection, rework, and bolt installation (Part 2)	8	Between $303 and $12,716.	Between $943 and $13,356.	Between $364,941, and $5,168,772.
Repetitive inspections for certain airplanes (Part 4).	4	None	$320, per inspection cycle.	$123,840, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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. 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, 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2009–06–08 Boeing: Amendment 39–15844. Docket No. FAA–2006–25390; Directorate Identifier 2005–NM–224–AD.

Effective Date

(a) This AD becomes effective April 28, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007.

Unsafe Condition

(d) This AD results from reports of cracks found in the lower wing skin originating at the forward tension bolt holes of the aft pitch load fitting. We are issuing this AD to detect and correct cracking in the lower wing skin for the forward tension bolt holes at the aft pitch load fitting, which could result in a fuel leak and reduced structural integrity of the airplane.

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.

External Inspections of the Wing Skin

(f) For airplanes identified as Group 1, Configuration 1, 2, 3, or 6; Group 2, Configuration 1, 2, 3, or 6; and Group 3, Configuration 1 or 3; in Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007: At the later of the times specified in paragraph (f)(1) or (f)(2) of this AD, perform the detailed inspection and the external high frequency eddy current (HFEC) or dye penetrant inspections for cracking as specified in Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007. Repeat the inspections at intervals not to exceed 3,000 flight cycles or 12,000 flight hours, whichever occurs first, until the actions required by paragraph (g) or (j) of this AD are accomplished.

(1) Prior to the accumulation of 10,000 total flight cycles or 30,000 total flight hours, whichever occurs first.

(2) Within 3,000 flight cycles or 12,000 flight hours after the effective date of this AD, whichever occurs first.

Internal Inspections of the Wing Skin

(g) For airplanes identified in paragraphs (g)(1) and (g)(2) of this AD: Perform the bolt open-hole inspections for cracking in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007, at the times specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, until the requirement of paragraphs (h) or (j)(1) of this AD are accomplished. Doing the actions in this paragraph terminates the requirements of paragraph (f) of this AD.

(1) For airplanes on which the modifications of the nacelle strut and wing structure specified in any service bulletin listed in Table 1 of this AD have been done: Do the inspection at the later time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD. Repeat the inspections at intervals not to exceed 16,500 flight cycles or 65,000 flight hours, whichever occurs first.

(i) Within 16,500 flight cycles or 65,000 flight hours, whichever occurs earlier, after

accomplishment of a service bulletin identified in Table 1 of this AD.

(ii) Within 3,000 flight cycles or 12,000 flight hours after the effective date of this AD, whichever occurs first.

TABLE 1—THRESHOLD SERVICE BULLETINS

Boeing Service Bulletin—	Revision level—	Dated—
767–54–0080	Original	October 7, 1999.
767–54–0080	1	May 9, 2002.
767–54–0081	Original	July 29, 1999.
767–54–0081	1	February 7, 2002.
767–54–0082	Original	October 28, 1999.
767–54–0082	1	November 4, 2004.
767–54–0082	3	September 20, 2007.

(2) For airplanes on which the modifications of the nacelle strut and wing structure specified in any service bulletin listed in Table 1 of this AD have not been done: Do the inspection at the later of the times specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD. Repeat the inspections at intervals not to exceed 16,500 flight cycles or 65,000 flight hours, whichever occurs first.

(i) Before the accumulation of 20,000 total flight cycles or 60,000 total flight hours, whichever occurs earlier.

(ii) Within 72 months after the effective date of this AD.

Acceptable Method of Compliance With Paragraph (g) of This AD

(h) For all airplanes: Doing the actions in both paragraphs (h)(1) and (h)(2) of this AD is an acceptable method of compliance for the repetitive inspection requirements of paragraph (g) of this AD after the initial paragraph (g) inspection is accomplished.

(1) Accomplishing the inspections specified in Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007, within 3,000 flight cycles or 12,000 flight hours, whichever occurs first, after the accomplishment of the most recent inspection done in accordance with paragraph (g) of this AD (Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007).

(2) Repeating the inspections specified in Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007, at intervals not to exceed 3,000 flight cycles or 12,000 flight hours, whichever occurs first.

Repair of Cracking

(i) If cracking is found during any inspection required by paragraph (f) or (h) of this AD: Before further flight, repair in accordance with the procedures specified in paragraph (o) of this AD.

(j) If cracking is found during any inspection required by paragraph (g) of this AD: Before further flight, oversize the fastener hole in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007, except as provided by paragraphs (j)(1) and (j)(2) of this AD.

(1) If any cracking cannot be removed by oversizing the fastener hole in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007, before further flight, accomplish the freeze plug repair in accordance with Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007, except as provided by paragraph (j)(2) of this AD. Accomplishing the freeze plug repair ends the repetitive inspections required by paragraphs (f) and (g) of this AD for the repaired wing only.

(2) If any cracking is outside the limits specified for the freeze plug repair in Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007, before further flight, repair in accordance with the procedures specified in paragraph (o) of this AD.

Repetitive Inspections Required After Freeze Plug Repair

(k) For airplanes on which of the requirements of paragraph (j)(1) of this AD have been accomplished, perform the repetitive inspections specified in paragraphs (k)(1) and (k)(2) of this AD at the times specified.

(1) At the later time in paragraph (k)(1)(i) or (k)(1)(ii) of this AD: Accomplish the external inspections specified in Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with the procedures specified in paragraph (o) of this AD. Repeat the external inspections at intervals not to exceed 3,000 flight cycles or 12,000 flight hours, whichever occurs earlier.

(i) Prior to the accumulation of 37,500 total flight cycles or 90,000 total flight hours, whichever occurs earlier.

(ii) Within 18 months after accomplishment of the freeze plug repair specified in Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007.

(2) At the later of the times specified in paragraph (k)(2)(i) or (k)(2)(ii) of this AD: Perform an internal HFEC for cracking, in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007. If any cracking is found during any inspection required by this paragraph, before further flight, repair in accordance with the procedures specified in paragraph (o) of this AD. Repeat the inspections at intervals not to exceed 12,000 flight cycles or 48,000 flight hours, whichever occurs earlier.

(i) Prior to the accumulation of 37,500 total flight cycles or 90,000 total flight hours, whichever occurs earlier.

(ii) Within 72 months after accomplishment of the freeze plug repair specified in Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007.

Repair of Certain Cracking

(l) If any cracking is found during any inspection required by this AD, and Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

No Reporting Requirement

(m) Although Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Credit for Actions Accomplished Previously

(n) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–57A0097, dated September 29, 2005, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917-6421; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(p) You must use Boeing Service Bulletin 767–57A0097, Revision 1, dated October 18, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on February 27, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket Nos. RM08–7–000 and RM08–7–001; Order No. 713–A]

Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards

Issued March 19, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (Commission) approves Reliability Standard IRO–006–4, submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). The Reliability Standard addresses transmission loading relief requirements, which provide a mechanism to manage and, if necessary, curtail interchange transactions. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop modifications to Reliability Standard IRO–006–4 to address specific Commission concerns.

DATES: *Effective Date:* This rule will become effective April 23, 2009.

FOR FURTHER INFORMATION CONTACT:

Patrick Harwood (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6125, *patrick.harwood@ferc.gov*.

Christopher Daignault (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8286, *christopher.daignault@ferc.gov*.

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1. Pursuant to section 215 of the Federal Power Act (FPA) [1] the Commission approves Reliability Standard IRO–006–4, submitted to the Commission for approval by the North American Electric Reliability Corporation (NERC). The Reliability Standard addresses transmission loading relief requirements, which provide a mechanism to manage and, if necessary, curtail interchange transactions. In addition, pursuant to section 215(d)(5) of the FPA, the Commission directs NERC to develop modifications to Reliability Standard IRO–006–4 to address specific concerns identified by the Commission.

[1] 16 U.S.C. 824o (2006).

I. Background

A. Procedural Background

2. On December 21, 2007, NERC, the Commission-certified electric reliability

organization (ERO), submitted for Commission approval modifications to Reliability Standard IRO–006–4 (Reliability Coordination—Transmission Loading Relief), known as the transmission loading relief or ''TLR'' procedure.[2]

3. On April 21, 2008, as supplemented on May 16, 2008, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed to approve three NERC filings, including Reliability Standard IRO–006–4.[3] In response, nine interested persons filed comments, six of which address the TLR procedure at issue here.[4] (The Commission consolidated three ERO submissions in the RM08–7–000 rulemaking proceeding. This Supplemental Final Rule only addresses the ERO's December 21, 2007 filing pertaining to the TLR Reliability Standard. The Commission addressed the other two ERO filings in Order No. 713, *i.e.*, the Final Rule in this proceeding.)

4. On July 21, 2008, the Commission issued a Final Rule in this proceeding, which approved five Reliability Standards and approved NERC's interpretation of other Reliability Standards.[5] The Commission, however, did not make a determination in the Final Rule regarding Reliability Standard IRO–006–4 and, instead, directed NERC to submit a filing explaining one aspect of the TLR procedure.

5. On September 11, 2008, NERC submitted a filing as directed in the Final Rule. Notice of NERC's September 11, 2008 filing was published in the **Federal Register**, 73 FR 75,429. Three interested persons submitted comments.[6]

B. Reliability Standard IRO–006–4

6. Reliability Standard IRO–006–4 applies to balancing authorities, reliability coordinators, and transmission operators. Reliability Standard IRO–006–4 modifies Reliability Standard IRO–006–3, which the Commission approved in Order No. 693.[7] In its December 2007 filing, NERC explained that it modified the TLR procedure to ''extract'' commercial requirements and business practices.[8] Further, the modified Reliability Standard includes changes directed by the Commission in Order No. 693 related to the appropriateness of using the TLR procedure to mitigate a violation of an interconnection reliability operating limit (IROL).[9]

7. Reliability Standard IRO–006–4 contains five requirements. Requirement R1 obligates a reliability coordinator experiencing a potential or actual system operating limit (SOL) or IROL violation within its reliability coordinator area to select one or more procedures to mitigate potential or actual transmission overloads. The requirement also identifies the regional TLR procedures in WECC and ERCOT. Requirement R1 includes a warning that the TLR procedure alone is an inappropriate and ineffective tool to mitigate an actual IROL violation and provides alternatives.

8. Requirement R2 mandates that the reliability coordinator only use local TLR or congestion management procedures to which the transmission operator experiencing the potential or actual SOL or IROL is a party.

9. Requirement R3 establishes that a reliability coordinator with a TLR obligation from an interconnection-wide procedure follow the curtailments as directed by the interconnection-wide procedure. It also requires that a reliability coordinator desiring to use a local procedure as a substitute for curtailments as directed by the interconnection-wide procedure must obtain prior approval from the ERO.

10. Requirement R4 mandates that each reliability coordinator comply with interconnection-wide procedures, once they are implemented, to curtail transactions that cross interconnection boundaries. Requirement R5 directs balancing authorities and reliability coordinators to comply with applicable interchange-related Reliability Standards during the implementation of TLR procedures.

II. Discussion

A. Approval of Reliability Standard IRO–006–4

11. In the NOPR, the Commission proposed to approve IRO–006–4 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.[10]

12. NERC and IESO support approval of the Reliability Standard. Lafayette and LEPA state that they support the Commission's effort to reduce the use of TLRs; they support adoption of the Reliability Standards as proposed by the Commission.

13. Pursuant to section 215(d) of the FPA, the Commission approves Reliability Standard IRO–006–4 as mandatory and enforceable. The ERO's proposal implements the Commission's directives in Order No. 693 to include a warning that the TLR procedure is an inappropriate and ineffective tool to mitigate actual IROL violations and identify available alternatives to mitigate an IROL violation.[11] Further, as discussed below, the Commission believes that the separation of business practices from the Reliability Standards will not compromise Bulk-Power System reliability. Accordingly, the Commission approves IRO–006–4 as just, reasonable, not unduly discriminatory or preferential, and in the public interest, as discussed below.

14. As a separate matter, pursuant to section 215(d)(5) of the FPA, the Commission directs the ERO to develop, pursuant to its Reliability Standards development procedure, modifications to IRO–006–4 to address the Commission's specific concerns, as discussed below. Further, the Commission approves the proposed violation risk factors and violation severity levels and directs the ERO to submit a filing within 60 days of the effective date of this Supplemental Final Rule revising specified violation risk factors and violation severity levels.

[2] Reliability Standard IRO–006–4 is not codified in the Commission's regulations and is not attached to this Supplemental Final Rule. It is, however, available on the Commission's eLibrary document retrieval system in Docket No. RM08–7–000 and also is available on the ERO's Web site, *http://www.nerc.com*.

[3] *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards*, Notice of Proposed Rulemaking, 73 FR 22856 (Apr. 28, 2008), FERC Stats. & Regs. ¶ 32,632, at P 48 (2008) (NOPR), Supplemental Notice of Proposed Rulemaking, 73 FR 30326 (May 27, 2008), FERC Stats. & Regs. ¶ 32,635 (2008) (Supplemental NOPR).

[4] Appendix A identifies the NOPR commenters.

[5] *Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards*, Order No. 713, 73 FR 43613 (July 28, 2008), 124 FERC ¶ 61,071 (2008) (Order No. 713 or Final Rule).

[6] Appendix B identifies the commenters on NERC's September 11, 2008 filing. In addition, NERC filed reply comments.

[7] *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[8] The commercial requirements were transferred to a North American Energy Standards Board (NAESB) business practices document. The Commission approved the NAESB TLR standard, WEQ–008, to coincide with the effective date of Reliability Standard IRO–006–4. *See Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676–C, 73 FR 43848 (July 29, 2008), FERC Stats. & Regs. ¶ 31,274, at P 7 n.11, P 9, P 80 (2008); *see also* Order No. 713, 124 FERC ¶ 61,071 at P 8.

[9] An IROL is a system operating limit that, if violated, could lead to instability, uncontrolled separation, or cascading outages that adversely impact the reliability of the Bulk-Power System.

[10] NOPR, FERC Stats. & Regs. ¶ 32,632 at P 47.

[11] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 577.

1. Transfer of Business-Related Requirements to NAESB

15. The Commission, in the NOPR, sought comments on whether the removal and transfer to NAESB of the business-related issues formerly contained in Reliability Standard IRO–006–3 could compromise Bulk-Power System reliability.[12]

a. Comments

16. NERC states that it has coordinated with NAESB and believes there is no compromise in reliability as a result of the removal and transfer to NAESB of the business-related issues formerly contained in the earlier standard, IRO–006–3. NERC notes that there are minor differences in terminology and language between the NERC and NAESB documents. It states that, although these differences may be confusing to industry, they do not affect the ability to successfully implement the standards as written. Further, NERC indicates that it is working with NAESB to develop more in-depth coordination procedures to ensure that language is consistent.

b. Commission Determination

17. Based on the ERO's explanation, we are persuaded that the separation of business practices from the Reliability Standards will not compromise Bulk-Power System reliability. However, we are concerned with respect to the ERO's acknowledgement that there are differences in terminology and language used between the ERO Reliability Standard and the NAESB standard that pertain to TLR procedures. The ERO indicates that it is currently working with NAESB to develop more in-depth coordination procedures to ensure that language is consistent. Thus, we expect that the ERO, working with NAESB, will resolve the inconsistencies in terminology between the Reliability Standard and NAESB standard regarding TLR procedures as their agendas permit; we do not find a need to direct changes at this time.

2. Improvements to the TLR Procedure

a. Comments

18. Several commenters raise concerns regarding needed improvements to the TLR procedure. Lafayette and LEPA comment that they have often ''suffered'' from the curtailment of firm transmission service pursuant to the TLR procedure and support efforts to reduce its use. NRG comments that the excessive use of TLRs is reducing system reliability in some non-organized markets and that the Commission should require NERC to modify its TLR rules to limit the excessive use of TLRs. NRG states that the Interchange Distribution Calculator (IDC) is critical to the TLR process,[13] since reliability coordinators rely on the curtailments specified by the IDC. NRG identifies two significant problems with the IDC that IRO–006–4 does not address: (1) The generation and load data relied on by the IDC is static, with no requirement that it be regularly updated or accurately reflect real-time conditions; and (2) the IDC methodology does not curtail certain schedules or determine native network load obligations accurately in some cases, leading to a discriminatory assignment of reliability obligations. NRG urges the Commission to direct NERC to modify the IDC to base its curtailment decisions on accurate native load information and to base them consistently on local load and generation amounts.

19. Further, NRG states that there is a gap in the proposed TLR procedures that allows certain non-firm transactions to escape curtailment prior to the issuance of a Level 5 TLR (*i.e.*, curtailment of firm transactions and firm native load). NRG reiterates its concerns in its comments on NERC's September 11, 2008 filing in this proceeding.

20. ISO/RTO Council suggests that the Commission clarify that, although TLR should not be ruled out as a congestion management tool, NERC should address the use of more sophisticated tools to respond to the impacts that loop flow and the lack of transparency in non-RTO regions can have on congestion management at the ''seams.''

b. Commission Determination

21. The above comments on suggested improvements to the TLR procedure are beyond the scope of this proceeding, which pertains to the separation of business practices from the ERO's TLR procedure and implementation of the Commission's directives set forth in Order No. 693.[14] We note, however, that the ERO indicated in its December 21, 2007 filing that it has a three-phase plan to improve the TLR procedures, and the third phase will consist of ''a complete redrafting to incorporate enhancement and changes beyond the separation of reliability and business practice issues.'' [15] Therefore, the phase three proceeding would provide a proper forum for commenters to raise their concerns. The Commission believes that NRG and other commenters raise valid issues and urges the commenters to raise—and expects the ERO to consider—these matters in an appropriate proceeding. We also note that NERC states it is currently updating the IDC to more accurately determine the impacts of native load and network service.[16]

B. Requirement R1

22. Requirement R1 of IRO–006–4 provides, in part:

> R1. A Reliability Coordinator experiencing a potential or actual SOL or IROL violation within its Reliability Coordinator Area shall, with its authority and at its discretion, select one or more procedures to provide transmission loading relief. These procedures can be a ''local'' (regional, interregional, or sub-regional) transmission loading relief procedure or one of the following Interconnection-wide procedures:
>
> R1.1 The Interconnection-wide Transmission Loading Relief (TLR) procedure for use in the Eastern Interconnection is provided in Attachment 1–IRO–006–4. The TLR procedure alone is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure. Other acceptable and more effective procedures to mitigate actual IROL violations include: Reconfiguration, redispatch, or load shedding.

Below, we address three concerns regarding Requirement R1: (1) Use of the TLR procedure in conjunction with other procedures to mitigate an IROL violation; (2) use of the TLR procedure to mitigate an actual IROL violation is a violation of the Reliability Standard; and (3) use of demand-side management as an effective procedure to mitigate IROL violations.

1. Use of TLR Procedure in Conjunction With Other Procedures To Mitigate an IROL Violation

a. Final Rule Discussion

23. In the Final Rule, the Commission did not approve or remand IRO–006–4 but rather directed the ERO to submit a filing addressing the Commission's concerns regarding Requirements R1 and R1.1 of the Reliability Standard.[17] Specifically, the Final Rule explained

[12] NOPR, FERC Stats. & Regs. ¶ 32,632 at P 49.

[13] The IDC is a mechanism used by the reliability coordinators in the Eastern Interconnection to calculate the distribution of interchange transactions over specific flowgates. It includes a database of all interchange transactions and a matrix of the distribution factors for the Eastern Interconnection.

[14] NERC's comments in reply to NRG, as well as Constellation's and, in their joint supplemental pleading, Lafayette and LEPA's comments relating to the TLR procedure are likewise beyond the scope of this proceeding.

[15] NERC December 21, 2007 Filing at 7. Moreover, pursuant to the ERO's Rules of Procedure, a commenter can submit a Standard Authorization Request to the ERO to propose revisions to a Reliability Standard.

[16] *See* NERC September 11, 2008 Response at 10.

[17] Order No. 713, 124 FERC ¶ 61,071 at P 46–50.

that, consistent with the *Final Blackout Report*,[18] Order No. 693 directed NERC to develop a modification to the TLR procedure that the Commission accepted in IRO–006–3 that ''(1) includes a clear warning that the TLR procedure is an inappropriate and ineffective tool to mitigate actual IROL violations and (2) identifies in a Requirement the available alternatives to mitigate an IROL violation other than use of the TLR procedure.''[19]

24. In its December 2007 filing, NERC stated that it modified the Reliability Standard in response to the Order No. 693 directive. In particular, the ERO modified Requirement R1.1 of IRO–006–4 to provide that ''[t]he TLR procedure [for the Eastern Interconnection] *alone* is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure.'' (Emphasis added.)

25. In Order No. 713, the Commission queried whether the language of Requirements R1 and R1.1 are adequate to satisfy the concern of the *Final Blackout Report* and Order No. 693 that the TLR procedure not be used in response to an actual IROL violation. The Commission explained:

> An entity is not prevented from using the TLR procedure to avoid a potential IROL violation before a violation occurs. If, while a TLR procedure is in progress, an IROL violation occurs, it is not necessary for the entity to terminate the TLR procedure. However, the Commission believes that it is inappropriate and ineffective to rely on the TLR procedure, even in conjunction with another tool, to address an *actual* IROL violation.[20]

Accordingly, the Commission directed the ERO to explain Requirements R1 and R1.1 of IRO–006–4 in light of this concern.

b. NERC Responsive Filing

26. NERC responds that the most immediate reliability goal is the mitigation of the IROL violation. NERC states that there are four acceptable options to respond to an IROL violation: inter-area redispatch, intra-area redispatch, reconfiguration of the transmission system, and voluntary or involuntary reductions in load. According to NERC, Requirement R1.1 of IRO–006–4 identifies these options as ''reconfiguration, redispatch, or load shedding.''

27. Further, NERC believes that taking concurrent action, i.e., using TLR in conjunction with one of the above operation actions, ''can result in positive outcomes.'' [21] NERC agrees with the Commission that the use of TLR prior to an actual IROL violation is an acceptable practice. NERC also agrees that a TLR should not be terminated following the occurrence of an IROL violation if the TLR procedure was already in progress. However, NERC points out that it is impossible to decouple the TLR actions of the previous hour from those of the current hour. According to NERC, the progressive nature of TLR requires constant management to ensure that reliability and open access are maintained. NERC maintains that the Commission should endorse a situation where, on a continuing basis, a TLR can be reissued for a constrained facility in order to assist in providing relief, in addition to the more immediate operator actions taken to alleviate the actual overload. NERC disagrees that all interchange transactions should be frozen at current levels while any new transactions are held, because this could result in aggravation of the IROL violation from an increase in native load and/or parallel flows. For similar reasons, NERC also believes it is inappropriate to let the curtailments issued for the current hour expire and not reissue the TLR, because this practice also could aggravate the IROL violation, as the single-hour established curtailments would expire and transactions would be reloaded.

28. NERC avers that the intent of the Commission's directive is that, should an entity experience an actual IROL violation, that entity should not invoke the TLR process with the belief that the IROL violation will be mitigated by the TLR within an acceptable timeframe. NERC contends, however, that any standard that would require a reliability coordinator to explicitly *not* use TLR as one of the tools it has in responding to an actual IROL violation could compromise reliability, open access, or both. NERC states that it is appropriate for an entity to use the TLR process in response to an actual IROL, provided such use is a complementary action to other operator actions employed to mitigate the IROL violation more expeditiously and, as such, invoking TLR is not the only action taken.

29. NERC provides examples of use of TLR in conjunction with other acceptable options to provide a more rapid and effective return from emergency conditions. For example, NERC states that if an entity redispatches generation and invokes a TLR at the same time in response to an actual IROL violation, that entity may utilize the generation to respond immediately to mitigate the violation and bring the flow below the IROL, then reduce the generation once the TLR is able to effectively and more equitably address the issue.

c. Comments on NERC Responsive Filing

30. Southern agrees with NERC's explanation regarding the ways in which a reliability coordinator may use the TLR procedure. Southern believes that the TLR procedure, when used in conjunction with reconfiguration, redispatch, or load shedding, is an indispensable means for providing relief for constrained facilities. Southern comments that any revision to Reliability Standard IRO–006–4 should be developed through the Reliability Standards development process.

31. ISO/RTO Council comments that it generally agrees with the sequencing of TLR procedures as explained by NERC. While ISO/RTO Council supports limiting the wide-scale use of TLR as a congestion management tool, it believes that the Commission's interpretation may draw too fine a line in ''hard wiring'' a particular sequence of the use of TLRs. It agrees with NERC that ''it is impossible to decouple the actions of the previous hour from those of the current hour,'' and urges the Commission to avoid placing artificial barriers in the sequencing of the use of the TLR procedure.

d. Commission Determination

32. The Commission is satisfied with the ERO's response. We agree with the ERO that acceptable immediate actions to mitigate an IROL violation may include one or more of the following: inter-area redispatch, intra-area redispatch of generation, reconfiguration of the transmission system, and voluntary or involuntary load reductions. When an IROL violation occurs, the reliability coordinator should use the above tools appropriate to the circumstance and duration of the actual IROL violation for mitigation.

33. We understand from its explanation that the ERO agrees that use of the TLR procedure is not one of the acceptable immediate actions to mitigate an IROL violation. Rather, use

[18] *See* U.S.-Canada Power System Outage Task Force, *Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, at 163 (April 2004) (*Final Blackout Report), available at http://www.ferc.gov/industries/electric/indus-act/blackout.asp.* Recommendation 31 of the report provides that NERC should ''[c]larify that the [TLR] process should not be used in situations involving an actual violation of an Operation Security Limit.''

[19] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 577, 964.

[20] Order No. 713, 124 FERC ¶ 61,071 at P 49.

[21] NERC September 11, 2008 Response at 4.

of the TLR procedure is complementary to, and may be used in conjunction with, the identified tools to mitigate an IROL violation, provided that the action to implement the TLR procedure does not interfere with or delay an entity taking the immediate action required to mitigate the IROL violation.[22] The Commission understands this is the intent of the language in Requirement R1.1 that ''[t]he TLR procedure alone is an inappropriate and ineffective tool to mitigate an IROL violation due to the time required to implement the procedure.''

34. The Commission reiterates that the use of a TLR is not required to be terminated following the occurrence of an IROL violation if the TLR procedure was already in progress prior to exceeding the IROL. Thus, if an IROL is exceeded after a TLR procedure is in progress, the reliability coordinator does not need to revoke the TLR. Moreover, in the event that a potential IROL violation progresses to an actual IROL violation near the top of the hour and a TLR is already in progress, it is acceptable for the reliability coordinator to reissue the TLR to prevent reloading or exacerbating interchange schedules, while more immediate actions are taken to relieve the IROL violation.

35. During an actual IROL violation, the primary concern of the reliability coordinator should be to mitigate the violation immediately. Because the TLR procedure may take an extended time to fully implement, it is not acceptable for a reliability coordinator to invoke the TLR process with the belief that the IROL violation will be mitigated by the TLR. Therefore, during an actual IROL violation, a reliability coordinator should initiate more immediate actions to relieve the IROL violation before initiating a TLR and at no point should implementing a TLR divert operator resources or delay implementation of more immediate IROL mitigation actions. In accord with this understanding, we find Requirement R1.1 consistent with the *Final Blackout Report* and Order No. 693.

36. As discussed above, based on the ERO's response we believe that our understanding of Requirement R1.1 comports with that of the ERO. While IRO–006–4, Requirement R1.1, should be implemented and enforced with the above understanding, we believe that the term ''alone'' in the provision could be improved to more precisely convey that it is a violation of Requirement R1.1 to rely on the TLR procedure when an entity is in the process of mitigating an IROL violation and the entity has not taken more immediate and effective means to achieve relief. Accordingly, pursuant to section 215(d)(5) of the FPA, the Commission directs the ERO to develop a modification of Requirement R1.1 with respect to the term ''alone,'' consistent with this discussion.

[22] The ERO states that ''it is appropriate for an entity to use the TLR process in response to an actual IROL, provided that it is a complementary action to *other operator actions employed to mitigate the IROL violation more expeditiously* and, as such, invoking TLR is not the only action taken.'' NERC September 11, 2008 Response at 5 (emphasis added).

2. Use of TLR Procedure Alone To Mitigate an IROL Violation

37. In the NOPR, the Commission proposed to approve the Reliability Standard based on the interpretation that using a TLR procedure alone to mitigate an actual IROL violation is a violation of the Reliability Standard.[23]

a. Comments

38. ISO/RTO Council objects to the Commission's proposal to approve the proposed Reliability Standard IRO–006–4 based on the interpretation that using a TLR alone to mitigate an IROL violation is a violation of the Reliability Standard. ISO/RTO Council expresses concern that the ERO has procedures for interpreting Reliability Standards and those procedures may be eroded through after-the-fact Commission interpretation without the opportunity for NERC stakeholder review. ISO/RTO Council urges greater deference to following the Commission-approved NERC process for the interpretation of Reliability Standards. Should that process prove too time-consuming, ISO/RTO Council suggests that the Commission revisit the process itself rather than undertaking *de facto* amendments to it by interpreting the Reliability Standard in ways not addressed through the NERC stakeholder process.

b. Commission Determination

39. This issue raised in the NOPR is somewhat overtaken by the further Commission inquiry in the Final Rule regarding the appropriate tools for mitigating an IROL violation and our discussion immediately above on this issue. As we state above, IRO–006–4, Requirement R1.1, should be ''implemented and enforced'' based on our understanding in this order of the issue.

40. In any case, we adopt our NOPR proposal and approve Reliability Standard IRO–006–4 with the understanding that using a TLR procedure to mitigate an actual IROL violation is a violation of the Requirement R1.1 of the Reliability Standard, as discussed above. While ISO/RTO Council raises procedural concerns regarding the Commission's interpretation, neither ISO/RTO Council nor any other commenter expresses concern regarding the substance of the Commission's interpretation. Further, the Commission previously has determined—or interpreted—when a violation of a Reliability Standard would occur.[24]

[23] NOPR, FERC Stats. & Regs. ¶ 32,632 at P 48.

3. Use of Demand-Side Management To Mitigate IROL Violations

41. In a joint concurrence to the NOPR, then-Commissioner Wellinghoff and Commissioner Kelly noted that demand-side management is not explicitly included in Requirement R1.1 of IRO–006–4 among the acceptable tools to mitigate an IROL violation. The concurrence noted that nothing in the Reliability Standard precludes the use of demand-side management that can quickly respond to emergencies and discussed available demand-side management technologies currently used that may be deployed as readily, if not faster, than involuntary load shedding. The joint concurrence expressed a preference to expressly include demand-side management among the list of tools to mitigate IROL violations, set forth in Requirement R1.1.

a. Comments

42. NERC comments that it did not intend the list of tools in Requirement R1.1 for addressing IROL violations to be an exhaustive list; effective demand-side response could also be considered.

43. Alcoa comments that demand-side management should be included in the list of alternatives to the TLR procedure in IRO–006–4. Alcoa claims that its smelters have demonstrated an ability to curb demand to assist in TLR efforts and alleviate IROL violations. In addition, Alcoa claims that in some instances load may be able to respond to IROL violations more quickly and effectively than generation reserves. According to Alcoa, flexible loads served at transmission voltages are most effective for immediate demand response to IROL violations.

44. ISO/RTO Council comments that IRO–006–4 does not preclude reliance on demand-side management that can respond quickly to emergencies. It believes that the Reliability Standards should be resource-neutral in their

[24] *N. Am. Elec. Reliability Corp.*, 119 FERC ¶ 61,321, at P 10 (2007) (''A vegetation-related transmission outage would result in a violation of Requirement R1, R2 or both.'').

application. ISO/RTO Council states that, consistent with Order No. 693, so long as a resource can address system conditions, it should be recognized in the Reliability Standards as a tool upon which the system operator can rely. ISO/RTO Council also notes initiatives by NERC and NAESB to develop rules for classifying demand-side management and identifying methods for measurement and verification.

b. Commission Determination

45. It is clear from the comments of the ERO, Alcoa, and ISO/RTO Council that the Reliability Standard includes effective demand-side management as a tool to mitigate an IROL violation pursuant to Requirement R1.1 of IRO–006–4. In its September 11, 2008 filing, the ERO states that there are four acceptable options to respond to an IROL violation: inter-area redispatch, intra-area redispatch, reconfiguration of the transmission system, and voluntary or involuntary reductions in load. The ERO further explains that the reference in Requirement R1.1 to ''load shedding'' refers to voluntary or involuntary reductions in load.[25] Thus, as clarified by NERC, Requirement R1.1 allows the use of effective demand-side management as one tool to mitigate an IROL violation. The Commission will implement and enforce this Reliability Standard as clarified by NERC.

C. Violation Risk Factors

46. In the NOPR, the Commission proposed to direct the ERO to modify the violation risk factors assigned to Requirements R1 through R4 by raising them to ''high.'' This proposal was based on the Commission's guidelines for evaluating validity of violation risk factor assignments.[26] In particular, the Commission reasoned that a ''high'' violation risk factor assignment for Requirements R1 through R4 is consistent with findings of the *Final Blackout Report*.[27]

1. Comments

47. NERC, IESO, and ISO/RTO Council urge the Commission to adopt the violation risk factors proposed by NERC. NERC contends that the Commission's reliance on the violation risk factors for IRO–006–3, Requirements R1 through R4, submitted in 2007 is not appropriate.[28] NERC explains that the violation risk factors submitted in the current proceeding for IRO–006–4 received significant industry review and scrutiny, which was not the case with the 2007 submission.

a. Violation Risk Factors for Requirement R1

48. NERC agrees with the Commission that Requirements R1.1 through R1.3 are explanatory text and that a violation risk factor need not be assigned to each subsection. However, NERC, ISO/RTO Council, and IESO disagree with the Commission's proposal to direct the ERO to raise the violation risk factor from ''medium'' to ''high.''

49. Specifically, NERC and ISO/RTO Council disagree with the Commission's statement that a ''high'' violation risk factor assignment is consistent with the findings of the *Final Blackout Report.* According to NERC, the main thrust of Recommendation 31 in the *Final Blackout Report* (regarding the use of TLR in response to actual violations) has been addressed in Requirement R1.1 of the Reliability Standard and does not warrant a ''high'' violation risk factor designation. ISO/RTO Council contends that the *Final Blackout Report* does not identify and rank the associated risk of not implementing each recommendation. ISO/RTO Council claims that the *Final Blackout Report* Recommendation 31 simply focuses on reliability coordinators using tools other than TLRs for a real-time emergency.

50. Further, NERC contends that IRO–006–4, Requirement R1 and its sub-requirements are procedural in nature, because they focus on how relief is achieved rather than on whether relief is achieved. NERC recognizes that ''the result of an ineffective application of this requirement could impact the electrical state of the grid.'' [29] However, NERC posits that IRO–005–1, Requirement R5 is the principal source of the reliability coordinator's obligation to relieve actual or potential IROL violations. For these reasons, NERC believes Requirement R1 merits a ''medium'' violation risk factor.

51. IESO agrees with NERC's assessment that Requirement R1 is administrative in nature. IESO states that Requirement R1 provides the initiating reliability coordinator options from which to choose to relieve transmission constraints, and it becomes a reliability requirement only when a reliability coordinator chooses an interconnection-wide procedure as one of the means to relieve transmission constraints. IESO explains that if a reliability coordinator chooses other control actions but not an interconnection-wide TLR procedure to prevent or mitigate an IROL violation, this Reliability Standard will not apply, and the reliability coordinator will not be subject to the requirements in the standard. Further, IESO contends that if a reliability coordinator chooses to apply an interconnection-wide procedure and the requirements stipulated therein are not complied with, there is a potential risk on the control and operation of the system, because non-compliance with the TLR procedure may affect other actions that are also being applied to prevent or mitigate an IROL violation.

52. IESO and ISO/RTO Council disagree with the Commission's statement that, if the reliability coordinator chooses an unapproved and ineffective procedure for relief or fails to choose a procedure entirely, potential or actual IROL violations will not be mitigated as intended by the reliability coordinator.[30] According to IESO and ISO/RTO Council, with or without the interconnection-wide relief procedure, reliability coordinators and transmission operators are required by other Reliability Standards such as TOP–002, TOP–004, and IRO–005 to apply local control actions and procedures to prevent and mitigate SOL and IROL violations.

53. ISO/RTO Council also favors a ''medium'' violation risk factor assignment for Requirement R1, stating that interconnection-wide procedures are only one tool in the toolbox to restore system integrity.

b. Violation Risk Factors for Requirement R2

54. NERC does not believe that a reliability coordinator could successfully implement a local procedure to which the particular transmission operator is not a party. In any event, NERC does not believe that

[25] NERC September 11, 2008 Response at 4.

[26] The guidelines are: (1) Consistency with the conclusions of the Blackout Report; (2) consistency within a Reliability Standard; (3) consistency among Reliability Standards; (4) consistency with NERC's definition of the violation risk factor level; and (5) treatment of requirements that co-mingle more than one obligation. The Commission also explained that this list was not necessarily all-inclusive and that it retains the flexibility to consider additional guidelines in the future. A detailed explanation is provided in *North American Electric Reliability Corp.,* 120 FERC ¶ 61,145, at P 8–13 (2007).

[27] Recommendation 31 states, ''Clarify that the transmission loading relief (TLR) process should not be used in situations involving an actual violation or an Operation Security Limit.'' *Final Blackout Report* at 163.

[28] *See* NOPR, FERC Stats. & Regs. ¶ 32,632 at P 51 (noting that the corresponding requirements in the earlier Commission-approved version of the Reliability Standard were assigned a ''high'' violation risk factor).

[29] NERC Comments at 19. Unless otherwise indicated, citations to parties' comments refer to comments filed after the NOPR, prior to the Final Rule.

[30] *See* NOPR, FERC Stats. & Regs. ¶ 32,632 at P 52.

the implementation of such a procedure would in itself create a ''high'' reliability risk. NERC states that if the reliability coordinator were able to achieve the relief, then it would be considered as having the lesser infraction of using the wrong tools to achieve the correct results. Further, it states that if such a procedure did not provide the required relief, the reliability coordinator would be in violation of IRO–005–1, Requirement R5. NERC claims this requirement is focused on ''how'' the relief is provided, not ''whether'' the relief is provided. In addition, NERC states that the use of a local procedure is implemented at the discretion of the reliability coordinator and is not obligatory. Accordingly, NERC believes that a violation risk factor of ''lower'' is appropriate.

55. IESO argues the intent of Requirement R2 is to ensure that a reliability coordinator who initiates actions to relieve transmission constraints in a transmission operator's area applies the actions that are either totally local to the transmission operator's area or which have been developed by the transmission operator jointly with other transmission operators. IESO states that choosing which procedures to relieve transmission constraints is an administrative requirement since the reliability coordinator, having the authority to ensure wide area reliability, may apply any procedures that it deems necessary to relieve transmission constraints. IESO contends that in the event the reliability coordinator applies a relief procedure to which the constrained transmission operator is not a party, it should not be a presumption that prevention or mitigation of an IROL violation will not be achieved since the reliability coordinator is obligated to ensure operating reliability through compliance with IRO–005–1. For these reasons, IESO believes that Requirement R2 is administrative and deserves a ''lower'' violation risk factor.

56. IESO disagrees with the Commission assessment that ''[v]iolation risk factors should not be assigned differently for requirements in separate Reliability Standards based on compliance with another Reliability Standard,'' on the basis that ''[t]wo requirements either achieve separate reliability goals and, therefore, violation of them represents independent risks, or two requirements share the same reliability goal.'' [31] IESO states that, while the IRO–005–1 requirements and the TLR requirements share the same reliability goal, the latter is in fact subordinate to the former. Thus, IESO maintains that there should not be two simultaneous ''high'' risk penalties assessed for a reliability coordinator for failing to comply with the TLR procedure of Requirements R1 or R2 *and* for failing to prevent or mitigate an IROL violation as required in IRO–005–1.

c. Violation Risk Factors for Requirement R3

57. NERC maintains that Requirement R3 is focused on the procedural aspects of the Reliability Standard, i.e., how the relief is provided rather than whether the relief was provided. NERC argues that if the entity is able to achieve the relief through other means that were not pre-approved, then it would have committed an administration violation of using the wrong tools to achieve the correct results. According to NERC, if such a procedure did not provide the required relief, the reliability coordinator would be in violation of IRO–005–1, Requirement R5. For reasons similar to those provided for Requirement R2, IESO agrees with NERC that Requirement R3 is administrative and deserves a ''lower'' violation risk factor.

d. Violation Risk Factors for Requirement R4

58. NERC claims that a violation of Requirement R4 is ''a specific kind of violation of the INT family of Reliability Standards that is being caused by a reliability coordinator's inaction, resulting in an imbalance in one or both of the interconnections involved.'' [32] NERC comments that Requirement R4 complements the INT group of Reliability Standards in the same fashion as Requirement R5, which the Commission supported with a violation risk factor of ''medium.'' IESO concurs with NERC's assignment of a ''medium'' violation risk factor to Requirement R4. IESO reasons that complying with the provisions of the interconnection-wide procedure of the initiating reliability coordinator is no more stringent than complying with the request for relief based on the TLR procedure within the same interconnection, the latter being the requirement in R1.

2. Commission Determination on Violation Risk Factors

59. For the reasons stated in the NOPR and as discussed below, the Commission directs the ERO to modify the violation risk factors of Requirements R1 through R4 of IRO–006–4 to ''high.''

60. The Commission disagrees with NERC and others and finds that it is appropriate to use the *Final Blackout Report* as a basis for setting violation risk factors of the proposed Reliability Standard at ''high'' for several reasons. The *Final Blackout Report* is the result of the U.S-Canada Task Force's investigation of the August 14, 2003 blackout where the Task Force identified contributing factors and causes that put the Bulk-Power System at risk for that event. Specifically, the *Final Blackout Report* identified an attempt to use the TLR process to address transmission power flows without recognizing that the imposition of a TLR procedure would not solve the problem as one contributing cause for the initiation of the blackout of August 2003. Based on its findings, the Task Force developed recommendations to reduce the possibility of future outages and to reduce the scope of future blackouts that may nonetheless occur.[33] Thus, the Task Force developed Recommendation No. 31 to prevent the initiation of a TLR procedure during an actual violation of an SOL.[34] Since the *Final Blackout Report* was developed to document the August 14, 2003 blackout's contributing factors and causes, which include specific violations of then voluntary reliability policies, guidelines, and standards, the Commission believes it is appropriate to use the findings of the *Final Blackout Report* as one of the guidelines for the determination of a requirement's violation risk factor. Specifically, the Commission believes the findings of the *Final Blackout Report* are particularly relevant in the determination of violation risk factors of then-voluntary reliability policies, guidelines, and standards identified as causes and factors of the August 14, 2003 blackout that the ERO proposes as mandatory Reliability Standards, such as IRO–006–4. The Commission also disagrees for the same reasons with commenters that argue the *Final Blackout Report* does not identify and rank the associated risk of not implementing each recommendation.

61. While we agree that Requirement R.1.1 discourages the use of a TLR to mitigate a real-time IROL violation, Requirement R1.1, is merely explanatory text. It is Requirement R1 that establishes that the reliability coordinator shall choose one or more of the procedures, listed as sub-requirements, to provide the appropriate

[31] IESO Comments at 8 (quoting NOPR, FERC Stats. & Regs. ¶ 32,632 at P 53).

[32] NERC Comments at 21–22.

[33] *Final Blackout Report* at 20.

[34] *Id.* at 163.

transmission relief. The selection of a procedure to provide relief to address a potential or actual SOL or IROL violation is directly relevant to *Final Blackout Report* Recommendation No. 31. If an inappropriate procedure is selected in an attempt to mitigate an IROL, the Bulk-Power System is vulnerable to cascading outages, as was the case on August 14, 2003.

62. The Commission is not persuaded by NERC's argument relative to ''using the wrong tools to achieve the correct results'' in the assignment of a requirement's violation risk factor. Contrary to this argument, the Commission has recognized that there may be some Reliability Standards where the means, or the ''how,'' is inextricably linked to the effectiveness of the Reliability Standard.[35] We find that this is the case here. The Commission has explained that the inclusion of implementation practices within requirements of such a standard is to reduce uncertainty and further objectives that foster reliability which, if violated, would pose increased reliability risk to the Bulk-Power System.[36]

63. Similarly, NERC's argument that, if the reliability coordinator were able to achieve the relief desired without complying with Requirement R1, it would be considered as having the lesser infraction of using the wrong tools to achieve the correct results is also flawed. The purpose of the violation risk factor is to accurately portray the risk a violation poses to the Bulk-Power System,[37] notwithstanding a violator's avoidance of reliability problems in a particular case by using an unreliable operation. This Commission determination is relevant to arguments that a ''high'' violation risk factor is not appropriate because the subject requirement overlaps other requirements, duplicates other requirements, or could be implemented by alternative means. The Commission has previously determined that NERC should address those issues through the Reliability Standard development process.[38]

64. The Commission also disagrees with the characterization of Requirements R1, R2, and R3 as procedural choices without reliability-related consequences. For example, failure to implement Requirement R1, *i.e.*, failure to select one or more procedures to provide transmission relief, is not just a procedural or administrative choice; it is a decision that has the potential to place the Bulk-Power System at risk of cascading outages. Although commenters argue that a violation of Requirement R2 is essentially administrative in nature and that the prevention or mitigation of the potential or actual SOL or IROL may be achieved through compliance with another Reliability Standard, which would justify a ''lower'' violation risk factor, the Commission disagrees. Requirements R1 through R4 require that a reliability coordinator choose and follow the appropriate procedure to provide relief. If the reliability coordinator chooses an unapproved and/or ineffective procedure for relief or fails to choose a procedure entirely, potential or actual IROL violations will not be mitigated as intended by the reliability coordinator. Therefore, the Commission finds that violation of Requirements R1 through R4 present a high reliability risk to Bulk-Power System. Assigning a ''high'' violation risk factor to Requirements R1 through R4 is consistent with the *Final Blackout Report*.

65. A violation risk factor represents the reliability risk a violation of that requirement presents to the Bulk-Power System. Violation risk factors should not be assigned differently for requirements in separate Reliability Standards based on compliance with another standard. This assessed reliability risk is independent and not contingent upon compliance with other requirements of Reliability Standards. While the Commission recognizes the complementary nature of proposed Reliability Standard IRO–006–4, Requirement R1 and Reliability Standard IRO–005–1, Requirement R5, the fact that requirements may share the same reliability objective as another requirement does not justify lowering one or more of the requirements' violation risk factors. In fact, the Commission expects the assignment of violation risk factors corresponding to requirements that address similar reliability goals in different Reliability Standards to be treated comparably.[39] The Commission notes that Reliability Standard IRO–005–1, Requirement R5, is assigned a ''high'' violation risk factor.

66. Further, the argument that a ''lower'' violation risk factor assigned to Requirement R1 is appropriate since Requirement R1 is administrative in nature (because it provides the initiating reliability coordinator with options to choose among available procedures and only becomes a reliability requirement when a reliability coordinator chooses an interconnection-wide procedure) is flawed. First, the fact that a requirement provides ''options'' does not automatically make that requirement administrative. It is the potential reliability risks the failure to take options mandated by the requirement presents to the Bulk-Power System that determines that requirement's violation risk factor. Second, requirements become mandatory and enforceable reliability requirements only after Commission approval and not after any action, or inaction, by an applicable entity.

67. For the same reasons explained above, the Commission disagrees with comments that Requirement R3 focuses on procedural aspects of the Reliability Standard founded on the arguments that the requirement related to ''how'' the relief is provided rather than ''whether'' the relief was provided, where the ''wrong tools'' were used to achieve the ''correct results.'' Even if an entity, having violated a Reliability Standard, achieves correct results, the entity's success should be attributed to a matter of chance and may be more risky than the operation set forth in the Reliability Standard.

68. IESO's comment that there should not be two simultaneous ''high'' risk penalties assessed to a reliability coordinator who fails to comply with the TLR procedure of Requirements R1 and R2 is outside the scope of this proceeding. The determination of monetary penalties for a violation of a requirement is a compliance issue, which is best addressed in the context of a compliance proceeding.[40]

69. We do not agree that a violation of Requirement R4 is a specific type of violation of the INT Reliability Standards as NERC and IESO suggest. Requirement R4 requires a reliability coordinator to comply with interconnection-wide curtailment procedures whereas Requirement R5 requires reliability coordinators and balancing authorities to adhere to INT standards that largely specify interchange scheduling procedures. Failure to implement curtailment procedures poses a higher reliability risk, since it may place the Bulk-Power

[35] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, at P 260; *see also id.*, Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[36] *N. Am. Elec. Reliability Corp.*, 121 FERC ¶ 61,179, at P 15 (2007).

[37] *Id.* P 16.

[38] *Id.* P 39.

[39] *N. Am. Elec. Reliability Corp.*, 119 FERC ¶ 61,145, at P 25 (2007).

[40] We note that section 3.10 of NERC's Sanction Guidelines addresses multiple violations related to a single act or common incidence of noncompliance.

System at risk of cascading outages, than failure to implement scheduling procedures; therefore, it should receive a ''high'' violation risk factor.

3. Commission Determination on Violation Severity Levels

70. The ERO's December 21, 2007 filing included proposed violation severity levels corresponding to the requirements of IRO–006–4. Violation severity levels, which the ERO or the Regional Entity will apply to establish an initial base penalty range when assessing a penalty for the violation of a Reliability Standard, constitutes a post-violation measurement of the degree to which a requirement was violated.[41] The Commission accepts the violation severity levels proposed by the ERO that correspond to the Requirements of Reliability Standard IRO–006–4.

71. Further, in the Violation Severity Levels Order, the Commission directed the ERO to submit a compliance filing certifying that it has reviewed each of the violation severity level assignments for consistency with certain guidelines set forth in that order.[42] The Commission also directed that the ERO either validate the existing violation severity level designations or propose revisions to specific approved violation severity level assignments where the ERO determines that such assignments do not meet the specified guidelines. Consistent with the Violation Severity Levels Order, the Commission now directs the ERO to review the violation severity levels for IRO–006–4. The ERO must include in the compliance filing required by Ordering Paragraph (E) of the Violation Severity Levels Order a certification that it has reviewed each violation severity level assignment corresponding to the requirements of IRO–006–4 for consistency with certain guidelines (specifically, guidelines 2b, 3, and 4), validating the assignments that meet the guidelines and proposing revisions to those that fail to meet the guidelines.

72. Accordingly, with respect to the violation risk factors and severity levels, we approve IRO–006–4 as mandatory and enforceable. In addition, we direct the ERO submit a compliance filing within 60 days that revises violation risk factors to ''high'' for Requirements R1 through R4. The Commission approves the proposed violation severity levels and requires the ERO to submit a compliance filing, as discussed above.

III. Information Collection Statement

73. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[43] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[44] As stated above, the Commission previously approved, in Order No. 693, Reliability Standard IRO–006, which is the subject of this supplemental final rule. In the NOPR, the Commission explained that the modifications to the Reliability Standard are minor; therefore, they do not add to or increase entities' reporting burden. Thus, in the NOPR, the Commission stated that the modified Reliability Standard does not materially affect the burden estimates relating to the earlier version of Reliability Standard IRO–006 presented in Order No. 693.[45]

74. In response to the NOPR, the Commission received no comments concerning its estimate for the burden and costs and therefore uses the same estimate here.

Title: Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards.

Action: Proposed Collection.

OMB Control No.: 1902–0244.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This Supplemental Final Rule approves one modified Reliability Standard that pertains to transmission loading relief procedures. The Supplemental Final Rule finds the Reliability Standard just, reasonable, not unduly discriminatory or preferential, and in the public interest.

75. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426, Tel: (202) 502–8415, Fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*, or by contacting: Office of Information and Regulatory Affairs, Attn: Desk Officer for the Federal Energy Regulatory Commission (Re: OMB Control No. 1902–0244), Washington, DC 20503, Tel: (202) 395–4650, Fax: (202) 395–7285, e-mail: *oira_submission@omb.eop.gov*.

IV. Environmental Analysis

76. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[46] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[47] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

77. The Regulatory Flexibility Act of 1980 (RFA)[48] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business. (*See* 13 CFR 121.201.) For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours. The RFA is not implicated by this Final Rule because the minor modifications and interpretations discussed herein will not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

78. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to

[41] *See N. Am. Elec. Reliability Corp.*, 123 FERC ¶ 61,284, at P 3 (Violation Severity Levels Order), *order on reh'g*, 125 FERC ¶ 61,212 (2008) (extending compliance date).

[42] *See Violation Severity Level Order*, 123 FERC ¶ 61,284 at P 41 and Ordering Paragraph (E).

[43] 5 CFR 1320.11.

[44] 44 U.S.C. 3507(d).

[45] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1905–07. The NOPR, FERC Stats. & Regs. ¶ 32,632 at P 76–78, provided a detailed explanation why each modification has a negligible, if any, effect on the reporting burden.

[46] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[47] 18 CFR 380.4(a)(2)(ii).

[48] 5 U.S.C. 601–12.

view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

79. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

80. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

VII. Effective Date and Congressional Notification

81. The Supplemental Final Rule is effective April 23, 2009. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Appendix A—NOPR Commenters [49]

Alcoa Inc. (Alcoa)*
Constellation Energy Commodities Group, Inc. (Constellation)*
Independent Electricity System Operator of Ontario (IESO)*
ISO/RTO Council*
ITCTransmission; Michigan Electric Transmission Company, LLC; and ITC Midwest LLC
Lafayette Utilities and the Louisiana Energy and Power Authority (Lafayette and LEPA)*
North American Electric Reliability Corp. (NERC)*
NRG Companies (NRG)*
Southern Company Services, Inc. (Southern)

Appendix B—Comments in Response to NERC's September 11, 2008 Filing [50]

ISO/RTO Council
NRG
Southern

[FR Doc. E9–6416 Filed 3–23–09; 8:45 am]
BILLING CODE 6717–01–P

[49] An asterisk (*) indicates that the commenter addressed Reliability Standard IRO–006–4.

[50] M–S–R Public Power Agency filed a motion to intervene without comments.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–152–FOR; Docket ID: OSM–2008–0019]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; required amendment.

SUMMARY: We are reinstating a requirement for the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The requirement deals with documentation for the bonding provisions of the Pennsylvania program.

DATES: *Effective Date:* March 24, 2009.

FOR FURTHER INFORMATION CONTACT: George Rieger, Chief, Pittsburgh Field Division, Telephone: (717) 782–4036, e-mail: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. The Modified Required Amendment
III. OSM's Decision
IV. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** notice (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

Pennsylvania's Bonding Program

From 1982 until 2001, Pennsylvania's bonding program for surface coal mines, coal refuse reprocessing operations and coal preparation plants, was funded under an Alternative Bonding System (ABS), which included a central pool of money (Surface Mining Conservation and Reclamation Fund) used for reclamation, to supplement site-specific bonds posted by operators for each mine site. This pool was funded by a per-acre reclamation fee paid by operators of permitted sites.

In 1991, our oversight activities determined that Pennsylvania's ABS contained unfunded reclamation liabilities for backfilling, grading, and revegetation and we determined that the ABS was financially incapable of abating or treating pollutional discharges from bond forfeiture sites under its purview. As a result, on May 31, 1991, we imposed the required amendment codified at 30 CFR 938.16(h), 56 FR 24687. That amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee would assure that its Surface Mining Conservation and Reclamation Fund (Fund) could be operated in a manner that would meet the ABS requirements contained in 30 CFR 800.11(e). After a decade of trying to address the problems with the ABS, the Pennsylvania Department of Environmental Protection (PADEP) terminated the ABS in 2001 and began converting active surface coal mining permits to a Conventional Bonding System (CBS) or ''full-cost'' bonding program. This CBS requires a permittee to post a site specific bond in an amount sufficient to cover the estimated costs to complete reclamation in the event of bond forfeiture.

OSM published a final rule on October 7, 2003, removing the required amendment at 30 CFR 938.16(h) on the basis that the conversion from an ABS to a CBS rendered the requirement to comply with 30 CFR 800.11(e) moot. Subsequent to these OSM actions, a lawsuit was filed in the U.S. District Court for the Middle District Court of Pennsylvania, *Pennsylvania Federation of Sportsmen's Clubs Inc. (PFSC) et. al.* v. *Norton No. 1:03–CV–2220.* The Plaintiffs claimed, in relevant part, that

reclamation obligations already incurred under an ABS remain, even after the ABS is prospectively converted to a CBS. Thus, the Plaintiffs contended, the requirement to comply with the Federal ABS provision at 30 CFR 800.11(e) was not mooted by the conversion to a CBS. As noted above, the Defendants' position was that the conversion to the CBS eliminated the obligations imposed by 30 CFR 800.11(e), and that, as a result, the requirements contained in the required amendment at 30 CFR 938.16(h) were no longer applicable. The district court ruled in OSM's (i.e., the Defendants') favor, but was reversed by the United States Court of Appeals for the Third Circuit. Subsequently, on November 1, 2007, the District court set aside our October 7, 2003, termination of the 1991 required amendment. The appellate court's decision is discussed in the section below.

II. The Modified Required Amendment

On August 2, 2007, the United States Court of Appeals for the Third Circuit decided *PFSC* v. *Kempthorne,* 497 F.3d 337 (3rd Cir. 2007). At issue, relevant to this notice, was whether OSM properly terminated the requirement that Pennsylvania demonstrate that its Surface Mining Conservation and Reclamation Fund was in compliance with 30 CFR 800.11(e).

The Third Circuit concluded: ''while it is true that the 'ABS Fund' continues to exist in name, it no longer operates as an ABS, that is, as a bond pool, to provide liability coverage for new and existing mining sites.'' 497 F.3d at 349. However, the Court went on to conclude that ''800.11(e) continues to apply to sites forfeited prior to the CBS conversion.'' *Id.* at 353. In commenting further on 30 CFR 800.11(e), the Court stated ''The plain language of this provision requires that Pennsylvania demonstrate adequate funding for mine discharge abatement and treatment at all ABS forfeiture sites.'' *Id.* at 354.

Because the Third Circuit in *PFSC* v. *Kempthorne, Id.*, reversed the District Court, which had upheld our termination of the 1991 required amendment at 30 CFR 938.16(h), we decided to impose a modified version of amendment (h), which we believed was fully consistent with the rationale of the Third Circuit's decision while accounting for circumstances which had changed since 1991. Issuance of this modified required amendment was announced in the July 8, 2008, **Federal Register** at 73 FR 38918. After we published the modified version of 30 CFR 938.16(h), the Pennsylvania Federation of Sportsmen's Clubs, along with the other plaintiffs, filed a Motion to Reopen, to Substitute Party, and for Contempt in the matter of *PFSC* v. *Kempthorne, No. 1:03–CV–2220 (M.D. Pa.).* The plaintiffs alleged that the Federal defendants were in contempt of the district court's November 1, 2007, order on remand from the Third Circuit decision in *PFSC* v. *Kempthorne,* 497 F.3d 337 (3rd Cir. 2007), because they revised 30 CFR 938.16(h) from its 1991 form. The plaintiffs contend that the Federal defendants disobeyed the district court's order, which the plaintiffs claim did not authorize any modification to the required amendment. *PFSC* v. *Kempthorne, No. 1:03–CV–2220* (M.D. Pa.) (Motion to Reopen, to Substitute Party, and for Contempt filed July 16, 2008)

In order to resolve the matter of the contempt proceeding, and without admitting any liability with respect to the plaintiffs' allegations put forth in said proceeding, we announced the rescission of the revised version of the required amendment at 30 CFR 938.16(h) in an October 15, 2008, **Federal Register** notice 73 FR 60944. Nevertheless, the plaintiffs subsequently raised a concern that the October 15, 2008 rescission notice did not clearly provide for reinsertion of the original 1991 version of 30 CFR 938.16(h). Therefore, again in order to resolve plaintiffs' latest concerns, but without admitting any liability with respect to the plaintiffs' latest allegations, we have decided to take the action set forth in Section III, below.

III. OSM's Decision

Based on the above discussion we hereby reinstate, with one exception, the required amendment at 30 CFR 938.16(h), as it was published in the May 31, 1991 **Federal Register**, at 56 FR 24687. The last sentence of the May 31, 1991 required amendment is not being reinstated because the plaintiffs did not contest our 2003 decision to remove this portion of the required amendment before the United States Court of Appeals for the Third Circuit in *PFSC* v. *Kempthorne,* supra. The sentence that will not be reinstated provided as follows: In addition, Pennsylvania shall clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim.

IV. Procedural Determinations

Administrative Procedure Act

This rule is being issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. In view of the litigation and court order, we have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. For the same reason, we believe there is good cause under 5 U.S.C. 553(d)(3) of the APA to have the rule become effective on a date that is less than 30 days after the date of publication in the **Federal Register**. Also, the final rule is being made effective immediately in order to encourage Pennsylvania to bring its program into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that, to the extent possible, this rule meets the applicable standards of Subsections (a) and (b) of that Section.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is the fact that our decision affects the Pennsylvania regulatory program and will have no effect on Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(c). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 13.5A(2)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).* This certification is based on the fact that the required amendment simply requires the State of Pennsylvania to submit information sufficient to demonstrate that the revenues generated by the collection of the reclamation fee will assure that the Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e).

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on the fact that the required amendment simply requires the State of Pennsylvania to submit information sufficient to demonstrate that the revenues generated by the collection of the reclamation fee will assure that the Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e).

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 3, 2009.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 938.16 [Amended]

■ 2. In § 938.16, add paragraph (h) to read as follows:

* * * * *

(h) By November 1, 1991, Pennsylvania shall submit information, sufficient to demonstrate that the revenues generated by the collection of the reclamation fee, as amended in § 86.17(e), will assure that the Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e). Pennsylvania could provide such a demonstration through an actuarial study showing the Fund's soundness or financial solvency.

* * * * *

[FR Doc. E9–6403 Filed 3–23–09; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–8784–7]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final Notice of Partial Deletion of the Mouat Industries Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a direct final Notice of Partial Deletion of the surface and subsurface soil components of the Mouat Industries Superfund Site (Site), located in the Town of Columbus, Stillwater County, Montana, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Montana (State), through the Montana Department of Environmental Quality (MDEQ) because EPA has determined that all appropriate response actions at these identified parcels under CERCLA, other than five year reviews and operation and maintenance, have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to the surface and subsurface soils component of the Mouat Industries Superfund Site. The groundwater component will remain on the NPL and is not being considered for deletion as part of this action.

DATES: This direct final partial deletion will be effective May 26, 2009 unless EPA receives adverse comments by April 23, 2009. If adverse comments are

received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *http://www.regulations.gov:* Follow on-line instructions for submitting comments.
- *E-mail: hoogerheide.roger@epa.gov.*
- *Fax:* (406) 457–5056.
- *Mail:* Roger Hoogerheide, Remedial Project Manager; U.S. EPA Montana Office; Federal Building, Suite 3200; 10 West 15th Street; Helena, MT 59626.
- *Hand delivery:* U.S. EPA Montana Office; Federal Building, Suite 3200; 10 West 15th Street; Helena, MT 59626. 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–SFUND–1986–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.* , CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or are available for viewing and copying at the Site information repositories located at:

U.S. EPA Montana Office, Federal Building, Suite 3200, 10 West 15th Street, Helena, MT 59626, (406) 457–5000. Viewing Hours: Mon–Fri 8 a.m. to 5 p.m., excluding holidays.

Stillwater County Library, 27 North 4th Street; PO Box 266, Columbus, MT 59019–0266, 406–322–5009. Hours: (Library hours vary).

FOR FURTHER INFORMATION CONTACT: Roger Hoogerheide, Remedial Project Manager, 8MO, *hoogerheide.roger@epa.gov*, U.S. EPA, Region 8—Montana Office, 10 W. 15th St., Suite 3200, Helena, Montana 59626, (406) 457–5031 or 1–866–457–2690, extension 5031.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Partial Deletion
V. Partial Deletion Action

I. Introduction

EPA Region 8 is publishing this direct final Notice of Partial Deletion for the Mouat Industries Superfund Site from the National Priorities List. This partial deletion pertains to all surface and subsurface soils at the Mouat Industries Superfund Site. The NPL constitutes Appendix B of 40 CFR part 300 which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Mouat Industries Superfund Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective *May 26, 2009* unless EPA receives adverse comments by *April 23, 2009*. Along with this direct final Notice of Partial Deletion, EPA is co-publishing a Notice of Intent for Partial Deletion in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion and the partial deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Mouat Industries Superfund Site and demonstrates how the Site meets the deletion criteria. Section V discusses EPA's action to partially delete the Site parcels from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above

levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the surface and subsurface soil components of the Site:

1. EPA has consulted with the State prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the ''proposed Rules'' section of the **Federal Register**.

2. EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent for Partial Deletion prior to their publication today, and the State, through the MDEQ, has concurred with the partial deletion of the Site from the NPL.

3. Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion is being published in the Billings Gazette. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Mouat Industries Superfund Site from the NPL.

4. The EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

5. If adverse comments are received within the 30-day public comment period on this partial deletion, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's right or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the surface and subsurface soils of the Mouat Industries Superfund Site from the NPL.

Site Background and History

The Mouat Industries Superfund Site, CERCLIS ID MTD021997689, is located on Clough Avenue, Town of Columbus, Stillwater County, Montana. The Site is located in the flood-plain of the Yellowstone River and is less than 0.6 miles north of the present river channel in the SW ¼ of the NW ¼ of Section 27, T2S, R20E. The Site is approximately 4.5 acres. Clough Avenue and a railroad line are to the north of the Site and East 1st Avenue South and the Columbus Airport are to the south. The Site is adjacent to 13th Street and a parcel of open land that is owned by the Town of Columbus to the east and the Timberweld manufacturing facility is to the west. Land use at the Site is designated as light and heavy industrial. Residential areas lie within 0.5 miles of the Site. The portion of the Site that is fenced is owned by the Town of Columbus (Town) and Timberweld Manufacturing (Timberweld) owns the portion of the Site that is not fenced. The fenced portion of the Site is currently not being used and has a vegetative cover. Timberweld manufactures laminated beams and arches and supplies complete roof systems for a variety of structures including clubhouses, retail centers, banks, fine homes and churches around the United States and uses its portion of the Site as an open storage area for its products. Institutional Controls allow for redevelopment of this property as long as performance standards adopted under Chapter 17.76.030 and other requirements of the Town of Columbus Ordinance No. 328 (Superfund Overlay District) are followed.

The Town has owned the eastern portion of the Site since 1933. In 1960, the Town acquired the western portion of the Site which was later sold to Timberweld. Aerial photos of Columbus indicate industrialization of the area occurred between 1954 and 1957. A chromium processing plant was constructed on the Site in 1957 by William G. Mouat and Mouat Industries. Under a 5 year lease agreement with the Town, Mouat operated the plant beginning in 1957. In 1962, the lease was extended through August 6, 1967. Mouat's operation processed chromite ore mined from the Stillwater Mining Complex in south-central Montana into high-grade sodium dichromate which was sold as a corrosion inhibitor. The process subsequently generated sodium sulfate process wastes containing sodium chromate and sodium dichromate. These hexavalent chromium (Cr VI) containing compounds leached from the sodium sulfate waste piles into underlying soils and eventually into the groundwater. Additionally, normal facility operations resulted in sodium dichromate spills. The chromium processing plant was built and operated from 1957 to 1962. Chromium wastes were created during this time, but not after 1962.

In May of 1963, the Monte Vista Company (MVC) purchased the plant and equipment, and received an assignment of Mouat's lease for a portion of the Site. As mentioned above, Mouat's lease expired in 1967. Once this lease ended, MVC executed a five year lease directly with the Town. This lease was effective from January 1, 1969 until December 31, 1973.

In 1968, Mouat assigned its interest in the agreements it had with MVC to the Anaconda Minerals Company (AMC). AMC was involved with the Site until 1973 and during this time AMC took actions to address concerns the Town had about the Site. In 1969, AMC removed approximately 468 tons of stockpiled chromium salts from the Site yard. A portion of these salts were drummed and placed in the manufacturing building. The remainder was simply placed on the building's floor. The Site was then graded and gravel was laid over a portion of the yard.

In 1973, AMC performed sampling activities at the Site, identifying chromium in soils, surface water, and groundwater. Drainage ditches were also constructed around the manufacturing building to route storm water flow away from the building and yard. In an attempt to address visible chromium salts, sulfuric acid and ferrous sulfate were applied to the soil and mixed into a portion of the yard west and south of the building. The acid addition was done with the intent of reducing the Cr VI to the more stable and less soluble trivalent chromium (Cr III). AMC also removed tons of the drummed and stockpiled material from the manufacturing building to an off-Site location in Butte, Montana. In 1974, MVC removed equipment from the Site and demolished the processing building.

Timberweld entered into a lease with the Town for additional space on the

Site in 1975 to expand existing operations. During the same year, Timberweld discovered what was later found to be chromium precipitate coming up onto their property. Unsure of the source of this material, Timberweld covered both the leased and owned portions of their property with a foot of gravel, in an effort to protect the laminate wood products from the precipitate.

Groundwater sampling in 1977 defined a hexavalent chromium plume migrating from the Site and spreading southeast toward the Yellowstone River. EPA and the Montana Solid Waste Management Bureau conducted a Preliminary Site Investigation in June 1979. Further groundwater, surface water and soil sampling was conducted by EPA in September 1980, August 1983, July 1984, and April 1985. In early 1984, a complaint of unusual cattle deaths downgradient of the Site at the Wegner Ranch was reported to the Montana Department of Health and Environmental Sciences. In 1984 and 1985, inspections were conducted in attempts to determine whether a release of Site contaminants may have been associated with cattle deaths. However, no report indicated that the death of cattle was tied to the chromium contamination.

Hexavalent chromium is a hazardous substance as defined by CERCLA Section 101(14), and designated as such under 40 CFR part 117 and 40 CFR part 302. EPA proposed the facility for the NPL in 1984, 29 FR 40320 (Oct. 15, 1984). The Site received a Hazard Ranking System score of 31.66. The listing was final in 1986, 51 FR 21054 (June 10, 1986).

The contaminated surface and subsurface soils at the Mouat Industries Superfund Site were addressed through two Action Memorandums, signed in 1990 and 1991, while two other Action Memorandums, signed in 1996 and 2008, addressed Site controls and groundwater.

Removal Actions

The remediation of the Site was addressed through removal authority. The removal actions addressing surface and subsurface soils are discussed below.

In 1990, EPA issued an Action Memorandum to initiate a time-critical removal action to (1) secure the Site and to mitigate the threat of direct contact to hazardous materials by Timberweld's workers and nearby individuals, and (2) provide run-on, run-off drainage control for the Site. Approximately 1,400 feet of 6-foot industrial chain link fencing with two 20-foot wide gates with locks were installed around the Site to restrict public access to chromium-containing soils and secured a portion of the area that used to be Timberweld's storage yard. The Town performed all Site drainage controls. Due to the potential for direct contact with the high levels of chromium, EPA fenced the Site using time-critical removal authority and used Superfund Trust Fund money.

After the time-critical removal action was completed, it was determined that there was still a threat to public health posed by the Site through exposure to CrVI contaminated soils, surface water and groundwater through the direct contact, inhalation and ingestion pathways. The threats met the removal criteria specified in the NCP at 40 CFR Section 300.415(b)(2)(i), (ii), (iv), (v). A second Action Memorandum was issued in 1991 which specified treatment of CrVI contaminated soils on-Site as the primary removal alternative with off-site disposal of soils as a back up.

After efforts to negotiate an Administrative Order on Consent with the responsible parties failed, EPA issued Unilateral Administrative Order (UAO) Docket No. CERCLA–VIII–92–05 on November 12, 1991 to FMC Corporation, MVC, Mouat, Timberweld, and the Town of Columbus requiring the excavation and treatment of chromium-contaminated soil. EPA specified removal clean-up standards as follows:

- Soil inside the EPA perimeter fence for which total chromium in the extract Toxicity Characteristic Leaching procedure (TCLP chromium) was greater than 0.5 mg/L was to be excavated to elevation 3564 or to the clay-gravel interface, whichever was lower.
- Soil outside the EPA fence for which TCLP chromium was greater than 0.1 mg/L was to be excavated to elevation 3564 or to the clay-gravel interface, whichever was lower.

FMC Corporation began implementing the provisions of the UAO in December 1991. After preliminary work, including sampling and preparation of work plans, full-scale treatment of contaminated soils began on June 28, 1993. The treatment process included soil screening, chemical addition for chromium reduction, and Portland cement addition for soil fixation. Performance standards for treated soils were established as follows:

- The TCLP chromium was to be equal to or less than 0.5 mg/L;
- The total chromium in any extract obtained by the Multiple Extraction Procedure was to be equal to or less than 5.0 mg/L;
- The unconfined compressive strength of each block was to be equal to or greater than 50 pounds per square inch; and
- The permeability of treated soil was to be equal to or less than that of the background soils.

On-site soil treatment operations were conducted through October 31, 1993. During that period approximately 14,000 cubic yards of chromium-containing soil were treated, creating approximately 7,000 blocks. The treated soils were formed into 5′ x 5′ x 6′ blocks for curing, testing, and placement. The treatment process converted hexavalent chromium to the less toxic and immobile trivalent chromium. Analytical results showed that all blocks met performance standards.

In 1994, in response to changing project conditions, EPA decided to change the removal action to the backup alternative of off-Site disposal as outlined in the 1991 Action Memorandum. The soils excavated in 1994 by FMC, for which the TCLP chromium exceeded the clean-up standard were removed from the Site by rail for disposal at appropriately permitted off-Site disposal facilities. Soil that tested as hazardous (TCLP chromium greater than or equal to 0.5 mg/L of leachable chromium) was sent to the USPCI hazardous waste treatment and disposal facility at Grassy Mountain, Utah. Soil that tested as non-hazardous (TCLP chromium less than 0.5 mg/L of leachable chromium) was sent to the East Carbon Development Corporation nonhazardous waste disposal facility at East Carbon, Utah. Off-Site disposal of the remaining affected soils began on July 7, 1994 and was completed by October 1, 1994. Approximately 19,400 cubic yards of chromium-contaminated soils were excavated and transported for off-Site disposal.

Upon completion of contaminated soil excavation and transport off-site, treated soil blocks formed in 1993 were placed in the excavation area and stacked until approximately 3 feet above original grade over the eastern two-thirds of the Site. After all response actions contemplated in the 1991 Action Memorandum were completed, the Site was graded to modest slopes to promote precipitation runoff. The western portion of the property was surfaced with a gravel cover to allow vehicular and storage use of the area. The eastern portion was covered with soil and seeded to establish a vegetative cover.

Cleanup Goals

Response activities were conducted in accordance with the Unilateral Administrative Order and the Action Memorandums for the Site. Soil inside

the EPA perimeter fence for which total chromium in the extract Toxicity Characteristic Leaching procedure (TCLP chromium) was greater than 0.5 mg/L were excavated to elevation 3564 or to the clay-gravel interface, whichever was lower. Soil outside the EPA fence for which TCLP chromium was greater than 0.1 mg/L were excavated to elevation 3564 or to the clay-gravel interface, whichever was lower.

For waste left on-Site, each block of treated soil was sampled and analyzed for compliance with performance standards. Analytical results show that all blocks met the cleanup standard in the TCLP extract. The maximum chromium concentration in any TCLP extract was 0.47 mg/L and most values were less than 0.1 mg/L. EPA's oversight contractor, the U.S. Bureau of Reclamation, also reported that

* * * all EPA split samples for 28-day cure treated soils * * * met performance criteria * * * for TCLP extractable total chromium, total chromium in (the more aggressive) multiple extraction testing, and unconfined compressive strength. Moreover, the close correspondence between EPA and FMC split samples indicates that FMC data base was appropriate for guiding remedial site operations * * *

Institutional Controls

Long term protectiveness is dependent upon institutional controls over land use and groundwater use, established by the town of Columbus. A zoning ordinance was approved in March 1995 which created a special Superfund Overlay District (SOD) for both the block placement area and contaminated groundwater. These institutional controls are described in the 1996 Action Memorandum. The ordinance became enforceable in April 1995. Requirements of the SOD are enforced by the zoning authority of Columbus. The SOD currently covers surface, subsurface and groundwater within the block placement areas and surrounding protective zones.

The following land use restrictions are included in the ordinance:

- Excavation into the blocks of treated soil is prohibited.
- Vehicle loads on the graveled portion of the block placement area are limited.
- Any use of the soil-covered block placement area, unless those areas are paved or covered with gravel, is prohibited.
- The property owner is required to maintain the Site cover, drainage facilities, and fences.
- Specifications for construction on the block placement area are established.

Initially, groundwater use restrictions applied to the entire SOD. Those restrictions prohibited new wells or other groundwater extraction systems and prohibited groundwater use from existing wells or other groundwater extraction systems, except for lawn irrigation use, use of the existing golf course pond and groundwater monitoring. Compliance with performance standards triggered the relaxation of ground water use restrictions within the SOD in accordance with provisions of the 1996 response action. Based on improvements in groundwater quality since adoption of the SOD, the USEPA approved lifting of groundwater use restrictions within the SOD in a May 2005 letter to the Town of Columbus.

In 2008, the five-year review recommended revisiting the SOD. Due to residual groundwater contamination levels above MCLs within the block placement area, groundwater use restrictions should be maintained within this area. A fourth Action Memorandum was issued in 2008 based on these recommendations from the Five-Year Review and had four (4) purposes:

1. It clarified Points of Compliance for groundwater at the Site.
2. It ensured that the restriction on groundwater use in the Block Placement Area will be maintained as long as institutional controls are necessary.
3. It clarified the 30 year groundwater monitoring requirement identified in the June 21, 1996 Action Memorandum.
4. It required MDEQ and EPA to prepare a Post Removal Site Control Plan pursuant to Section 300.415(l)(3) of the NCP.

Modification in the Town of Columbus' Superfund Overlay District Ordinance

Town Council met on March 3, 2008, and passed the second reading of the Superfund Overlay District Amended Ordinance to restrict groundwater use in the block placement area. It became effective thirty days later.

Operation and Maintenance

The operation and maintenance is currently limited to maintenance of fencing and the vegetative cap over the block placement area and is the responsibility of the Town of Columbus and Timberweld.

As part of the future work to be performed at the Site, the Town will continue to provide access to the Site and to enforce ICs through the SOD. EPA and MDEQ also agree to meet with the Town to discuss Site land use and groundwater restrictions at least once every five years. These meetings are intended to help all parties better understand the issues associated with these restrictions as well as to notify the EPA and MDEQ of any upcoming land use changes that may require a more comprehensive review.

These requirements are documented in the Post Removal Site Control Plan.

Five-Year Review

Five-year reviews are required since waste remains on-Site above levels that allow for unlimited use and unrestricted exposure. The last five-year review was completed on March 13, 2008. No major concerns were identified during this review. The removal actions as implemented are currently protective of human health and the environment. Protectiveness is achieved through groundwater and land use restrictions within the block placement area. The next Five-Year Review is scheduled for the 1st quarter of Federal Fiscal Year 2013.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617. Documents in the partial deletion docket which the EPA relied on for recommendation for the partial deletion from the NPL are available to the public in the information repositories and a notice of availability of the Notice of Intent for Partial Deletion has been published in the Billings Gazette to satisfy public participation procedures required by 40 CFR 300.425(e)(4).

Determination That the Criteria for Deletion Have Been Met

The response actions were successful in restoring the Site surface and subsurface soils to concentrations at or below the cleanup standard of less than 0.5 mg/L TCLP chromium. For waste left on-Site, each block of treated soil was sampled and analyzed for compliance with this standard. Analytical results show that all blocks met the cleanup standard in the TCLP extract. The maximum chromium concentration in any TCLP extract was 0.47 mg/L and most values were less than 0.1 mg/L.

EPA has consulted with the MDEQ, the Town of Columbus, Timberweld Manufacturing and FMC Corporation on the proposed partial deletion of the surface and subsurface soils from the NPL prior to developing this Notice of Partial Deletion. EPA and MDEQ have also determined that the responsible

parties have implemented all appropriate response actions as specified in the Unilateral Administrative Orders and Action Memorandums and no further response action by responsible parties is appropriate other than continued maintenance of institutional controls. EPA and MDEQ have also determined through the Five-Year Review that all response actions have been completed such that any release from the block placement area where waste has been left in place poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

The State, through MDEQ, has concurred on the proposed deletion and provided such concurrence in writing. EPA also provided the State 30 working days for review of the partial deletion notice prior to its publication in the **Federal Register**.

V. Partial Deletion Action

The EPA, with concurrence of the State through the MDEQ, has determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. Therefore, EPA is deleting the surface and subsurface soils component of the Mouat Industries Superfund Site from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective May 26, 2009, unless EPA receives adverse comments by April 23, 2009. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous Waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 10, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR. 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by revising the entry under Montana for ''Mouat Industries Superfund Site'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
MT	Mouat Industries.	Columbus	*** P
*	*	*	*

[a] * * *.

***P = sites with deletion(s).

[FR Doc. E9–6142 Filed 3–23–09; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–72

[FMR Amendment 2009–03; FMR Case 2009–102–1; Docket 2009–0002; Sequence 2]

RIN 3090–AI86

Federal Management Regulation; FMR Case 2009–102–1, Delegation of Authority To Perform Ancillary Repair and Alteration Work in Federally Owned Buildings Under the Jurisdiction, Custody or Control of the General Services Administration

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

ACTION: Final rule.

SUMMARY: GSA is amending the Federal Management Regulation (FMR) to delegate to Executive agencies the authority to perform ancillary repair and alteration work in federally owned buildings under the jurisdiction, custody or control of GSA in accordance with the terms, conditions and limitations set forth in sections 102–72.66 through 102–72.69.

DATES: *Effective Date:* April 23, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, General Services Administration, at (202) 501–1737, or by e-mail at *stanley.langfeld@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FMR Amendment 2009–03, FMR Case 2009–102–1.

SUPPLEMENTARY INFORMATION:

A. Background

The GSA Federal Acquisition Service established Ancillary Repair and Alterations as a Special Item Number (SIN) in the GSA Multiple Award Schedule. The SIN provides for the acquisition of ancillary repair and alteration services when it is a minor part of a project and is required to support a product or service that is purchased under the same GSA Multiple Award Schedule from the same vendor.

An Executive agency may not perform ancillary repair and alteration work in a federally owned building under the jurisdiction, custody or control of GSA using this SIN without first obtaining a delegation of authority from the Administrator of General Services. To promote efficiency and economy, 41 CFR sections 102–72.66 through 102–72.69 delegate such ancillary repair and alteration authority to all Executive agencies in accordance with the terms, conditions and limitations set forth in those sections.

B. Executive Order 12866

The GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the

approval of the Office of Management and Budget under 44 U.S.C. 3501–3521.

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801, since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–72

Delegation of authority.

Dated: January 23, 2009.

Paul F. Prouty,

Acting Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102–72 as set forth below:

PART 102–72—DELEGATION OF AUTHORITY

■ 1. The authority citation for 41 CFR part 102–72 continues to read as follows:

Authority: 40 U.S.C. 121(c), 40 U.S.C. 3305, 40 U.S.C. 3314.

■ 2. Add sections 102–72.66 through 102–72.69 to read as follows:

§ 102–72.66 Do Executive agencies have a delegation of authority to perform ancillary repair and alteration projects in federally owned buildings under the jurisdiction, custody or control of GSA?

Yes. Executive agencies, as defined in § 102–71.20, are hereby delegated the authority to perform ancillary repair and alteration work in federally owned buildings under the jurisdiction, custody or control of GSA in accordance with the terms, conditions and limitations set forth in §§ 102–72.67 through 102–72.69.

§ 102–72.67 What work is covered under an ancillary repair and alteration delegation?

(a) For purposes of this delegation, ancillary repair and alteration projects are those—

(1) Where an Executive agency has placed an order from a vendor under a GSA Multiple Award Schedule and ancillary repair and alteration services also are available from that same vendor as a Special Item Number (SIN);

(2) Where the ancillary repair and alteration work to be performed is associated solely with the repair, alteration, delivery, or installation of products or services also purchased under the same GSA Multiple Award Schedule;

(3) That are routine and non-complex in nature, such as routine painting or carpeting, simple hanging of drywall, basic electrical or plumbing work, landscaping, and similar non-complex services; and

(4) That are necessary to be performed to use, execute or implement successfully the products or services purchased from the GSA Multiple Award Schedule.

(b) Ancillary repair and alteration projects do not include—

(1) Major or new construction of buildings, roads, parking lots, and other facilities;

(2) Complex repair and alteration of entire facilities or significant portions of facilities; or

(3) Architectural and engineering services procured pursuant to 40 U.S.C. 1101–1104.

§ 102–72.68 What preconditions must be satisfied before an Executive agency may exercise the delegated authority to perform an individual ancillary repair and alteration project?

The preconditions that must be satisfied before an Executive agency may perform ancillary repair and alteration work are as follows:

(a) The ordering agency must order both the products or services and the ancillary repair and alteration services under the same GSA Multiple Award Schedule from the same vendor;

(b) The value of the ancillary repair and alteration work must be less than or equal to $100,000 (for work estimated to exceed $100,000, the Executive agency must contact the GSA Assistant Regional Administrator, Public Buildings Service, in the region where the work is to be performed to request a specific delegation);

(c) All terms and conditions applicable to the acquisition of ancillary repair and alteration work as required by the GSA Multiple Award Schedule ordering procedures must be satisfied;

(d) The ancillary repair and alteration work must not be in a facility leased by GSA or in any other leased facility acquired under a lease delegation from GSA; and

(e) As soon as reasonably practicable, the Executive agency must provide the building manager with a detailed scope of work, including cost estimates, and schedule for the project, and such other information as may be reasonably requested by the building manager, so the building manager can determine whether or not the proposed work is reasonably expected to have an adverse effect on the operation and management of the building, the building's structural, mechanical, electrical, plumbing, or heating and air conditioning systems, the building's aesthetic or historic features, or the space or property of any other tenant in the building. The Executive agency must obtain written approval from the building manager prior to placing an order for any ancillary repair and alteration work.

§ 102–72.69 What additional terms and conditions apply to an Executive agencies' delegation of ancillary repair and alteration authority?

(a) Before commencing any ancillary repair and alteration work, the Executive agency shall deliver, or cause its contractor to deliver, to the building manager evidence that the contractor has obtained at least $5,000,000 comprehensive general public liability and property damage insurance policies to cover claims arising from or relating to the contractor's operations that cause damage to persons or property; such insurance shall name the United States as an additional insured.

(b) The Executive agency shall agree that GSA has no responsibility or liability, either directly or indirectly, for any contractual claims or disputes that arise out of or relate to the performance of ancillary repair and alteration work, except to the extent such claim or dispute arises out of or relates to the wrongful acts or negligence of GSA's agents or employees.

(c) The Executive agency shall agree to administer and defend any claims and actions, and shall be responsible for the payment of any judgments rendered or settlements agreed to, in connection with contract claims or other causes of action arising out of or relating to the performance of the ancillary repair and alteration work.

(d) For buildings under GSA's custody and control, GSA shall have the right, but not the obligation, to review the work from time to time to ascertain that it is being performed in accordance with the approved project requirements, schedules, plans, drawings, specifications, and other related construction documents. The Executive agency shall promptly correct, or cause to be corrected, any non-conforming work or property damage identified by GSA, including damage to the space or property of any other tenant in the building, at no cost or expense to GSA.

(e) The Executive agency shall remain liable and financially responsible to GSA for any and all personal or property damage caused, in whole or in part, by the acts or omissions of the Executive agency, its employees, agents, and contractors.

(f) If the cost or expense to GSA to operate the facility is increased as a result of the ancillary repair and alteration project, the Executive agency shall be responsible for any such costs or expenses.

(g) Disputes between the Executive agency and GSA arising out of the ancillary repair and alteration work will, to the maximum extent practicable, be resolved informally at the working level. In the event a dispute cannot be resolved informally, the matter shall be referred to GSA's Public Buildings Service. The Executive agency agrees that, in the event GSA's Public Buildings Service and the Executive agency fail to resolve the dispute, they shall refer it for resolution to the Administrator of General Services, whose decision shall be binding.

[FR Doc. E9–6427 Filed 3–23–09; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–31; FCC 08–219]

Reexamination of the Comparative Standards for Noncommercial Educational Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses eight petitions for reconsideration of the *Second Report & Order,* in the closed ''mixed groups'' proceeding. The ''mixed groups'' proceeding sought to establish rules for resolving the situation when an application for an NCE broadcast station is mutually exclusive with an application for a commercial broadcast station. The *Second Report & Order* decided to accept applications for NCE stations on non-reserved channels in ''closed, mixed groups,'' but to dismiss those applications if they are mutually exclusive with applications for commercial stations. This document now affords a discrete group of pending applicants for NCE stations on non-reserved channels in closed, mixed groups that have been pending since the date of the Second Report & Order, a one-time opportunity to amend their applications to apply for a commercial broadcast station in order to avoid dismissal of their applications. This document reaffirms the other decisions in the *Second Report & Order.*

DATES: Effective April 23, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. For additional information, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Evan Baranoff, of the Media Bureau, Policy Division at *Evan.Baranoff@fcc.gov,* 418–7142.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Third Order on Reconsideration,* MM Docket No. 95–31, FCC 08–219, adopted on September 24, 2008 and released on December 2, 2008. The full text of this document is available on the Internet at the Commission's Web site: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-219A1.doc* . It is also available for inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from the Commission's copy and duplicating contractor, Best Copy & Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554. BCPI can be contacted at 202–488–5300 (phone), 202–488–5563 (facsimile), or *http://www.BCPIWEB.com.* Please be prepared to provide the appropriate FCC document number (FCC 08–219). To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Memorandum Opinion & Third Order on Reconsideration

I. Introduction

1. In this *Memorandum Opinion & Third Order on Reconsideration,* we resolve eight petitions for reconsideration of the *Second Report & Order,* 68 FR 26220, May 15, 2003. The *Second Report & Order*, among other things, established ''new policies for licensing spectrum that the Commission has not reserved for the exclusive use of broadcast stations that provide or intend to provide noncommercial educational (NCE) service.'' These new policies included the decision to permit applicants for NCE stations to apply for non-reserved channels, but to dismiss such applications should they conflict with applications for commercial stations. One petitioner seeks reconsideration of this decision, which was codified in § 73.5002(b) of the Commission's rules. For the reasons discussed below, we decline to reconsider establishment of this rule and affirm our decision to dismiss applicants for NCE stations for non-reserved channels that conflict with applications for commercial stations. Several other petitioners seek reconsideration of our decision not to accept any amendments to a discrete group of long-pending NCE applications, including amendments to change an applicant's status from NCE to commercial, and request that we not dismiss this specific group of applicants. For the reasons discussed below, we will reconsider the immediate dismissal of this discrete group of applicants for NCE stations, and will afford them a one-time opportunity to amend their long-pending applications to apply for commercial stations to avoid dismissal. Accordingly, we grant reconsideration of our decision not to accept any amendments to the discrete group of long-pending applications for NCE stations, but otherwise deny the petitions and reaffirm our earlier conclusions.

II. Background

2. The *Second Report & Order* established standards to resolve the situation when an application for an NCE broadcast station is mutually exclusive with an application for a commercial broadcast station (*i.e.* , ''mixed groups''). NCE stations can operate both on (1) channels reserved by the Commission specifically for NCE service and (2) non-reserved channels, which are also available to applicants for commercial stations. The Commission has long used different standards to resolve application conflicts for reserved channels, on the one hand, and non-reserved channels, on the other.

3. The Commission initiated this proceeding in 1995 to revise the criteria it used to select among competing applicants for new NCE stations. Subsequently, the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997) amended section 309(j) of the Communications Act of 1934 (the Act), to require the Commission to use competitive bidding to resolve application conflicts, but exempted NCE stations from this process, see 47 U.S.C. 309(j) (exempting stations described in Section 397(6) of the Act). As a result, the Commission in the *Report & Order,* 65 FR 36375, June 8, 2000, decided to use a non-auction, point system to resolve application conflicts for reserved channels, and use competitive bidding to resolve conflicts for non-reserved channels. In *National Public Radio, Inc.* v. *FCC,* 254 F.3d 226, 229 (D.C. Cir. 2001), parties challenged the procedures for non-reserved channels,

and the court concluded that the Act did not authorize the Commission to require applicants for NCE stations to compete at auction for non-reserved channels.

4. After notice and comment on the impact of the court decision, the Commission announced, in the *Second Report & Order,* new procedures for resolving conflicts between NCE and commercial applications for non-reserved channels and frequencies. In that order, the Commission held that although it will accept applications for NCE stations on non-reserved channels and frequencies, those that are mutually exclusive with applications for commercial stations will be dismissed. Applicants for AM and secondary service construction permits, however, will have a prior opportunity for settlement.

5. The Commission also reaffirmed that it will reserve a channel in the Table of Allotments (used for full-power FM and TV broadcast stations) for the exclusive use of NCE stations if a proponent for reservation demonstrates that an NCE station is technically precluded from using already-reserved channels, and that it will provide needed NCE service in a given area, according to certain defined standards. The Commission indicated that it would entertain requests for reservation using these criteria not only in future allocation proceedings, but also for allotments for which the Commission had adopted a Notice of Proposed Rulemaking before August 7, 2000, and for which it had not yet opened a filing window prior to the release of the *Second Report & Order.* As to channels or frequencies for which the Commission had already accepted long-form applications for construction permits, the Commission concluded that it would best promote the public interest to dismiss the long-pending competing applications for NCE stations so that the applications for commercial stations could proceed to auction. The Commission held that applicants for NCE stations in these pending, closed mixed groups would not have further opportunity to reserve the channels they had applied for, nor to amend their previously filed applications to propose commercial service in order to avoid dismissal.

III. Discussion

A. Licensing of Non-Reserved Spectrum

6. Under procedures adopted in the *Second Report & Order,* applicants for NCE stations may submit applications for non-reserved spectrum in auction filing windows. These applications are subject to dismissal if there is any mutually exclusive application for a commercial station. These procedures are codified in § 73.5002(b) of the Commission's rules. University of Missouri asks us to reconsider this decision, contending that it is tantamount to a ban on NCE stations' use of the non-reserved spectrum. University of Missouri argues that applications for NCE stations are highly likely to be mutually exclusive with those for commercial stations, and so will almost always be dismissed. In addition, University of Missouri states that the opportunities we afford NCE stations to reserve FM and TV channels and to settle application conflicts in the AM and translator services are unlikely to be helpful.

7. In the *Second Report & Order,* the Commission fully considered and rejected University of Missouri's claim that this decision is tantamount to a ban on NCE stations' use of the non-reserved spectrum. University of Missouri offers no new evidence or changed circumstances in its petition to cause us to reconsider our decision. Moreover, University of Missouri suggests no lawfully permissible alternative to our decision. We thus reaffirm our decision, and reject University of Missouri's petition for reconsideration.

8. As explained at the outset of the *Second Report & Order,* ''we are constrained by a number of court decisions, regulations, and statutory provisions that, taken together, limit our options.'' Again, the entirety of section 309(j)(1), 47 U.S.C. 309(j)(1), states: ''If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding * * *'' Paragraph 2 sets forth the relevant exemptions: ''The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission * * * for stations described in section 397(6) of this Act,'' *i.e.*, NCE stations.

9. Taken together, the statutory provisions sharply limit the Commission's authority in this area. In the past, the Commission allowed applicants for NCE stations to compete for non-reserved spectrum under the standards that applied to applicants for commercial stations. The Commission attempted to continue that longstanding policy after the 1997 Balanced Budget Act by allowing NCE stations to compete at auction for non-reserved channels and frequencies. As recognized by the *NPR* case, the statute mandates that we resolve mutually exclusive applications for commercial stations by competitive bidding, prohibits us from using that same system to resolve applications for NCE stations, but does not require us to follow any particular alternative procedure for applications for NCE stations. Accordingly, in the *Second Further Notice,* 67 FR 9945, March 5, 2002, the Commission outlined two possible courses of action: (1) Prohibit applications for NCE stations on non-reserved channels or frequencies, just as the Commission prohibits applications for commercial stations on reserved channels or frequencies, or (2) continue to allow the filing of applications for NCE station, which would be subject to dismissal if any conflict with applications for commercial stations could not be resolved. In the *Second Report & Order,* the Commission opted for the latter course of action. No commenting party suggested a workable alternative. The Commission believed that these two options were the most straightforward solutions to the problem and chose the one that was least harsh to applicants for NCE stations.

10. The reservation and settlement opportunities are not as limited as University of Missouri suggests, and thus our rule is not tantamount to a ban on NCE stations' use of non-reserved spectrum. As the Commission noted in the *Second Report & Order,* ''several parties have asked the Commission to allocate particular FM channels as reserved pursuant to the relaxed reservation standards [adopted in the *Report & Order* in the proceeding], and we have done so.'' Since the Commission released the *Second Report & Order,* the Media Bureau opened a window accepting reservation showings for nearly 500 additional FM channels. In response, 129 petitioners sought to reserve 91 vacant FM allotments. University of Missouri was one of the petitioners that took advantage of this opportunity. To date, 56 vacant FM allotments have been successfully reserved for NCE use. With respect to the effectiveness of settlement opportunities, as the Commission explained in the *Second Report & Order,* the Commission received approximately 4,700 applications for LPTV and TV translator stations during an auction filing window, but processed more than one third of them prior to auction because either only one application was filed, or the applicants reached a settlement. We fully recognize that the opportunities for reservation

and settlement are limited, and may not be as plentiful as University of Missouri prefers. We continue to believe, however, that the Commission's decision, given the statutory constraints, best serves the public interest, and again note that University of Missouri has failed to suggest any alternative approach that would comport with the legal restrictions on our authority in this area. Consequently, we decline to reconsider the decisions to accept applications for NCE stations on non-reserved channels and frequencies and to dismiss such applications if they remain mutually exclusive with applications for commercial stations after the expiration of any applicable opportunity for settlement.

B. Pending Applications

11. As discussed in the *Second Report & Order,* there remain pending closed groups of non-reserved channel mutually exclusive construction permit applications for NCE and commercial stations (*i.e.*, ''mixed groups''). Applications in these mixed groups were identified in Attachment A to ''Window Opened to Permit Settlements for Closed Groups of Mutually Exclusive Broadcast Applications,'' Public Notice, 16 FCC Rcd 17091 (2001). In the *Second Report & Order,* the Commission decided to dismiss the long-pending applications for NCE stations in mixed groups without providing these applicants an opportunity to avoid dismissal by amending their applications to change their status from NCE to commercial. Approximately 19 mixed groups of mutually exclusive applications for non-reserved channels remain pending; these include 13 FM mixed groups, two FM translator mixed groups, and four TV mixed groups. For the reasons discussed below, we will now reconsider the Commission's decision in the Second Report and Order and afford each of these applicants for NCE stations in the pending, closed mixed groups a one-time opportunity to amend their applications to apply for a commercial broadcast station in order to avoid dismissal.

12. Four petitioners ask us to reconsider the Commission's decision to dismiss these long-pending applications for NCE stations. Several petitioners contend that the decision is arbitrary and capricious. Black Hawk also claims that the decision is impermissibly retroactive. Marist College contends that the decision is inconsistent with the 1997 Balanced Budget Act. In addition, Fatima Response argues that the decision is not in the public interest. As alternatives, Black Hawk suggests that we give applicants with pending applications for NCE stations an opportunity to use the reservation procedures we established for future applicants; likewise, Fatima Response and Renaissance Community suggest that we permit applicants with pending applications for NCE stations in mixed groups to amend their applications to apply for commercial broadcast stations. Jack Garter opposes Black Hawk's petition, and argues that the *Second Report & Order* is not arbitrary and capricious or impermissibly retroactive and did not violate any processing ''rights.''

13. The Commission's primary rationale for previously opting to dismiss the pending applications for NCE stations in mixed groups was that some of these applications had been filed a decade ago, and that the Commission had provided numerous settlement opportunities to these mixed group applicants. In the *Second Report & Order,* the Commission was ''not persuaded that the equities favoring the applicants for NCE stations in these pending proceedings outweigh the delay in initiating new broadcast service to the public as well as the unfairness to applicants for commercial stations.''

14. We now are persuaded that the unfairness of immediate dismissal to this discrete group of long-pending applications for NCE stations outweighs any delay to those applicants for commercial stations that are mutually exclusive with these applicants. Unlike prospective applicants for NCE stations, these applicants for NCE stations in the mixed groups sought to be licensed as NCE stations before adoption of the *Second Report & Order* and thus without knowledge of the consequences of this decision. Moreover, we believe that we can expeditiously afford mixed group applicants for NCE stations a one-time opportunity to amend their pending applications to apply for a commercial station, while avoiding unnecessary delay to the pending commercial applicants, which initially dissuaded the Commission from providing such an opportunity.

15. Shortly after release of this Order, the Media Bureau will announce an amendment window to permit all applicants in the approximately 19 pending, closed mixed groups (1) that had filed applications for NCE stations as of the date of the *Second Report & Order* and that remain pending, and (2) that were mutually exclusive with those for commercial stations as of the date of the *Second Report & Order,* to amend their pending applications for the sole purpose of applying for a commercial station. After the close of this window, any application for an NCE station that remains mutually exclusive with any application for a commercial station will be dismissed with prejudice. There will be no additional opportunity for applicants in these pending, closed mixed groups to further amend their long-form applications. We believe that this processing policy will provide fairer treatment to pending applicants and better serve the public interest. It will give applicants for NCE stations one opportunity to reevaluate their long-pending plans in the context of full and complete information about how the licensing process will work and, as designed, it should not appreciably delay the introduction of new service. This approach will avoid the harsh result of dismissing applicants based on subsequently adopted processing rules in a manner that is consistent with the Act and with our commercial and NCE licensing schemes.

C. Vacant Allotments

16. Bible Broadcasting states that it agrees with the Commission's decision to accept reservation showings for certain vacant FM allotments and requests that we award three points to the successful reservation proponent in the subsequent application of the point system for that FM allotment. In essence, Bible Broadcasting asks us to award a ''finder's preference'' to the successful proponent of a reservation showing. Bible Broadcasting explains that many applicants for NCE stations have limited resources, and will be unwilling to undertake the expense of preparing a reservation showing without receiving such a preference at the licensing stage.

17. We deny Bible Broadcasting's petition. As a preliminary matter, the Commission does not award a finder's preference to successful proponents of allocations for commercial stations. Moreover, in adopting the current point system for NCE stations on reserved channels, the Commission explicitly declined to give any kind of finder's preference to the first entity or individual to file an application for a given frequency. We recognize that such a preference would create an incentive for any entity or individual to pursue a new allocation or to reserve it for NCE use. We believe, however, the existing factors in our current point system best serve the public interest in selecting a licensee. As the Commission said when it selected the point system over other methodologies to resolve application conflicts, favoring those who file first is not ''the optimal way to select applicants who will provide 'diversity and excellence' in educational

broadcasting to the public.'' Accordingly, we decline to award points to the successful proponent of a reservation showing.

D. Miscellaneous Issues

18. *MMTC Pleadings Withdrawn.* On June 16, 2003, MMTC filed a petition for reconsideration of the *Second Report & Order,* seeking changes in the eligibility requirements for the new entrant bidding credit used in broadcast auctions. In its petition, MMTC specifically requested that applicants in FM Auction No. 37 ''immediately'' report changes that cause a loss of, or reduction in, eligibility for a new entrant bidding credit. The Commission subsequently established such a requirement in FM Auction No. 37, and, as a result, MMTC withdrew its petition for reconsideration by a letter dated October 19, 2004. Accordingly, this matter is no longer before the Commission in this proceeding.

19. *Licenses Formerly Held by Michael Rice-Controlled Entities.* By Public Notice, 16 FCC Rcd 12832, released July 3, 2001, the Media Bureau and the Wireless Telecommunications Bureau collectively gave notice of filing procedures for applications for interim and permanent authority to operate the two AM (Rice AM Stations) and five FM stations (*Rice FM Stations*) (collectively, the Rice Stations) formerly licensed to entities controlled by Michael Rice. Because the filing window for AM Auction No. 32 had been completed, the *Rice Public Notice* announced a supplemental AM Auction No. 32 filing window for the Rice AM Stations. Seven entities timely filed applications for the AM facility at 640 KHz, Terre Haute, IN; six entities timely filed applications for the AM facility at 1230 KHz, Terre Haute, IN. One of the entities applying for both of the Rice AM stations, Word Power, Inc., indicated that it was applying for NCE stations. The *Rice Public Notice* also announced that the now-vacant allotments for the Rice FM Stations would be included in FM Auction No. 37 and interested parties could file Form 175 applications in the then-upcoming auction filing window. The allotments for the five Rice FM Stations were also included in the *Public Notice,* described *supra,* listing 500 vacant FM allotments for which NCE reservation showings could be filed. Four of the five Rice FM Station allotments received reservation showings.

20. University of Missouri now expresses concern about the impact of the *Second Report & Order* on the licenses for the Rice Stations and, in particular, the Channel 252C2 allotment in Columbia, Missouri—formerly licensed as KFMZ-FM. University of Missouri asks us to clarify whether the policies and rules established in the *Second Report & Order* apply to interim licensing for this channel. University of Missouri also contends that it should have an opportunity to reserve this channel for exclusive NCE use according to the criteria discussed in the *Second Report & Order.* Ultimately, University of Missouri suggests, the Commission should adopt unique procedures to license KFMZ–FM to avoid the litigation that it anticipates will result from the allotment's auction.

21. As previously discussed, the Media Bureau opened a window to permit interested parties an opportunity to reserve any of approximately 500 vacant FM allotments. Channel 252C2 in Columbia, Missouri was among these FM allotments, as were the four other FM channels previously used by Mr. Rice. University of Missouri, in fact, filed a reservation showing for the FM channel it seeks. Thus, insofar as it seeks this opportunity in its petition, the issue is now moot. To the extent University of Missouri seeks a non-auction mechanism to award a license for the channel on a permanent basis, we see no grounds for doing so. We find unpersuasive University of Missouri's argument that ineligible parties may attempt to acquire the license, and that such efforts will result in time-consuming litigation. This possibility applies to all broadcast auctions. A petitioner may raise such arguments post-auction when a prevailing applicant's long-form application is filed. Thus, this concern is insufficient to overcome the clear imperative of section 309(j) of the Act.

22. Applications filed in the supplemental AM Auction No. 32 filing window for the two Rice AM Stations also predated the release of the *Second Report & Order.* As a result of the *Second Report & Order,* any of the applications for NCE stations filed during this window that are mutually exclusive with applications for commercial stations are to be dismissed. The application of Word Power, Inc. was the only application for an NCE station. We, therefore, offer Word Power, Inc. the same relief offered to the applicants for NCE stations in mixed groups, discussed above, and will afford it the same time-limited opportunity to amend its application(s) to apply for commercial stations, in accordance with the procedures set forth above. After this limited amendment opportunity, all remaining mutually exclusive applications for commercial stations for the Rice AM Stations will proceed to auction.

IV. Conclusion

23. In this *Memorandum Opinion & Third Order on Reconsideration,* we reaffirm all decisions in the *Second Report & Order*, except that we will now permit parties with applications for NCE stations on non-reserved channels in closed mixed groups that have been pending since the date of the *Second Report & Order,* and were then mutually exclusive with applications for commercial stations, a one-time opportunity to amend their applications. We believe that reaffirmation of our earlier conclusions, subject to this change, best serves the public interest.

V. Procedural Matters

24. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

25. *Final Paperwork Reduction Act Analysis.* This *Memorandum Opinion & Third Order on Reconsideration* contains no new or modified information collections subject to the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (*codified in* Chapter 35 of Title 44 U.S.C.). 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, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); see 44 U.S.C. 3506(c)(4).

26. *Supplemental Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, 110 Stat. 847 (1996), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second Further Notice.* The Commission sought written public comment on the proposals in the *Second Further Notice,* including comment on the IRFA. No comments addressed the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was published in the *Second Report & Order.* This present Supplemental FRFA, which conforms to the RFA, supplements that FRFA. We note that

the Supplemental FRFA addresses only the matters considered on reconsideration in the *Memorandum Opinion & Third Order on Reconsideration.* Therefore, this Supplemental FRFA addresses only the one decision reversed from the *Second Report & Order*.

A. Need for, and Objectives of, the Memorandum Opinion & Third Order on Reconsideration

27. The Commission adopts this *Memorandum Opinion & Third Order on Reconsideration* to reaffirm its earlier conclusions in the *Second Report & Order,* except for one decision. In the *Second Report & Order,* the Commission decided to dismiss a discrete group of applicants for NCE stations for non-reserved channels that were mutually exclusive with applications for commercial stations without providing these applicants an opportunity to avoid dismissal by amending their applications to change their status from NCE to commercial. This discrete group of long-pending applications for NCE stations consists of approximately 19 mixed groups of mutually exclusive applications for non-reserved channels filed between 1994 and 1997; these include 13 FM mixed groups, two FM translator mixed groups, and four TV mixed groups. On reconsideration, the Commission will now afford each of these applicants a one-time opportunity to amend their applications to apply for a commercial broadcast station before dismissing these applications. The Commission is persuaded that the unfairness of immediate dismissal to this discrete group of long-pending applications for NCE stations outweighs any delay to those applicants for commercial stations that are mutually exclusive with these applicants. Unlike prospective applicants for NCE stations, these applicants for NCE stations in the mixed groups sought to be licensed as NCE stations before adoption of the *Second Report & Order* and thus without knowledge of the consequences of this decision. Moreover, the Commission finds that it can expeditiously afford mixed group applicants for NCE stations a one-time opportunity to amend their pending applications to apply for a commercial station, while avoiding unnecessary delay to the pending commercial applicants, which initially dissuaded the Commission from providing such an opportunity.

B. Summary of Significant Issues Raised by the Public in Responses to the IRFA

28. No comments addressed the IRFA, or otherwise discussed issues that may impact small entities.

C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

29. The RFA directs the Commission to provide a description of, and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA defines the term ''small entity'' as having the same meaning as ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

30. The decision adopted in this *Memorandum Opinion & Third Order on Reconsideration* will affect only (1) the discrete group of applicants for NCE stations for non-reserved channels and (2) those applicants for commercial stations that are mutually exclusive with these NCE applicants. These groups may include small businesses, and were included in the description and estimate of small entities in the FRFA to the *Second Report & Order.*

31. *Radio.* The applicants affected by this new decision may include existing radio stations. SBA defines as a small business those radio broadcasting stations that have no more than $7.0 million in annual receipts. The Commission has estimated the number of licensed radio stations to be 13,837, of which 4,754 are AM stations, 6,266 are commercial FM stations, and 2,817 are NCE FM stations. According to Commission staff review of the BIA Financial Network, MAPro Television Database (BIA) of March 30, 2007, about 10,420 commercial radio stations (or about 95 percent) of an estimated 11,000 commercial radio stations have revenue of $7.0 million or less. Many commercial radio stations, however, are affiliated with larger corporations with higher revenue, with the result that the estimated number of commercial radio stations overstates the number that qualify as small entities. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

32. *Television.* The applicants affected by this new decision may also include TV stations. The SBA defines a television broadcast station as a small business if such station has no more than $14.0 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' The Commission has estimated the number of licensed commercial television stations to be 1,376. According to Commission staff review of the BIA Financial Network, MAPro Television Database (BIA) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or about 72 percent) have revenues of $14.0 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed NCE television stations to be 380. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

33. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

34. The decision adopted in this *Memorandum Opinion & Third Order on Reconsideration* will not result in a change in the existing compliance, reporting and recordkeeping

requirements, except with respect to the discrete group of applicants for NCE stations that were previously dismissed in the *Second Report & Order* because they were mutually exclusive with applications for commercial stations. As a result of this Order, the discrete group of applicants for NCE stations is being permitted a one-time opportunity to file an amendment to their applications to change their status from NCE to commercial, and thereby avoid dismissal of their applications.

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

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

36. On reconsideration, the Commission determined it has two choices: (1) Reaffirm its decision in the *Second Report & Order* to immediately dismiss this discrete group of applicants for NCE stations or (2) give these applicants an opportunity to amend their applications to change their status from NCE to commercial, and thus avoid dismissal. In the *Second Report & Order*, we were not persuaded that the equities favoring the applicants for NCE stations outweighed the delay in initiating new broadcast service to the public as well as the unfairness to applicants for commercial stations. But we now believe that the unfairness of immediate dismissal to this discrete group of applicants for NCE stations outweighs any delay or unfairness to those applicants for commercial stations that are mutually exclusive with these applicants. Unlike future applicants for NCE stations, these applicants for NCE stations in the mixed groups sought to be licensed as an NCE station before adoption of the *Second Report & Order* and thus without full knowledge of the consequences of this decision. Moreover, we now believe that we can expeditiously afford applicants with pending applications a one-time opportunity to amend their applications to apply for a commercial station yet will avoid the delay and unfairness to applicants for commercial stations that initially dissuaded us from providing such an opportunity. After this filing opportunity, any application for an NCE station that remains mutually exclusive with any application for a commercial station will be dismissed with prejudice, in accordance with § 73.5002(b) of the rules. There will be no additional opportunity for applicants in these pending, closed mixed groups to further amend their long-form applications. We believe that this processing policy will provide fairer treatment to pending applicants and better serve the public interest. It will give applicants for NCE stations one opportunity to reevaluate their long-pending plans in the context of full and complete information about how the licensing process will work and, as designed, it should not appreciably delay the introduction of new service. This approach will avoid the extremely harsh result of dismissing applicants based on subsequently adopted processing rules in a manner that is consistent with our statutory commercial and NCE licensing schemes.

37. Furthermore, our new decision will benefit the applicants for NCE stations that are small businesses by allowing them a chance to compete for licenses. While some of the applicants for commercial stations that are small businesses may be harmed by facing increased competition for licenses, the harm to these entities would not be as great as that to those small businesses applicants for NCE stations that would face dismissal of their applications. In addition, the public is better served by this enhanced competition.

F. Report to Congress

38. The Commission will send a copy of this *Memorandum Opinion & Third Order on Reconsideration,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Memorandum Opinion & Third Order on Reconsideration,* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Memorandum Opinion & Third Order on Reconsideration* and this FRFA (or summaries thereof) will also be published in the **Federal Register**.

39. *Additional Information.* For additional information, please contact Evan Baranoff, Media Bureau, Policy Division, (202) 418–2120, or *Evan.Baranoff@fcc.gov.*

VI. Ordering Clauses

40. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309 and 405(a) of the Communications Act, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309 and 405(a), and § 1.429 of the Commission's rules, 47 CFR 1.429, that the petitions for reconsideration filed by the parties listed in Appendix A *are granted in part and denied in part* as indicated above, and that this *Memorandum Opinion & Third Order on Reconsideration* is *adopted.*

41. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Memorandum Opinion & Third Order on Reconsideration,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

42. *It is further ordered* that this proceeding is *terminated.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–6432 Filed 3–23–09; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 74, No. 55
Tuesday, March 24, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AL83

Prevailing Rate Systems; Redefinition of the New Haven-Hartford and New London, CT, Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule that would define the New Haven-Hartford and New London, CT, appropriated fund Federal Wage System (FWS) wage areas by county rather than by city and town boundaries. Defining the New England FWS wage areas by primarily considering county boundaries would provide greater consistency in how OPM defines FWS wage areas and would improve the ability to make direct data comparisons with Census Bureau data. The proposed rule would define the New Haven-Hartford wage area to include Hartford and New Haven Counties, CT, as the survey area and Fairfield, Litchfield, Middlesex, and Tolland Counties, CT, as the area of application and the New London wage area to include New London County, CT, as the survey area and Windham County, CT, as the area of application.

DATES: We must receive comments on or before April 23, 2009.

ADDRESSES: Send or deliver comments to Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Strategic Human Resources Policy Division, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov*; or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is engaged in an ongoing project to review the geographic definitions of Federal Wage System (FWS) wage areas. OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

FWS wage areas in New England differ from the majority of FWS wage areas in that they are geographically defined according to the boundaries of cities and towns rather than by the boundaries of counties. Under its methodology for defining metropolitan areas, the Office of Management and Budget (OMB) uses counties rather than cities and towns as the primary geographic entities for defining metropolitan areas in New England. OMB uses cities and towns in New England to define a secondary set of metropolitan areas. Because OMB considers its county-based metropolitan areas the primary set of metropolitan areas for New England, we propose to primarily apply the county-based metropolitan area definitions to FWS wage area boundaries. Defining the New England FWS wage areas by primarily considering county boundaries will provide greater consistency in how the OPM defines FWS wage areas and will improve the ability to make direct data comparisons with Census Bureau data. For example, some statistical programs, such as the Census Bureau's *County Business Patterns,* provide data by counties.

OPM recently completed reviews of the definitions of the New Haven-Hartford and New London, CT, wage areas and, based on analyses of the regulatory criteria for defining wage areas, is proposing the changes described below.

New Haven-Hartford, CT

This proposed rule would define the New Haven-Hartford, CT, appropriated fund FWS wage area by county rather than by city and town boundaries. The proposed rule would define the New Haven-Hartford wage area to include Hartford and New Haven Counties, CT, as the survey area and Fairfield, Litchfield, Middlesex, and Tolland Counties, CT, as the area of application.

The New Haven-Hartford survey area currently includes 1 town of Fairfield County, 15 towns of Hartford County, 2 towns of Middlesex County, and 11 towns of New Haven County. We propose that the New Haven-Hartford survey area be changed to include all of Hartford and New Haven Counties. The survey area would be conveniently located in the central part of the wage area and would closely reflect the prevailing rates paid by businesses in the wage area. Stratford town in Fairfield County and Cromwell and Middlefield towns in Middlesex County, currently part of the New Haven-Hartford survey area, would be redefined to the New Haven-Hartford area of application.

Hartford, Middlesex, and Tolland Counties comprise the Hartford-West Hartford-East Hartford, CT Metropolitan Statistical Area (MSA). Old Saybrook town in Middlesex County is part of the current New London wage area. Somers and Somersville towns in Tolland County are part of the current Central and Western Massachusetts wage area. OPM regulations at 5 CFR 532.211 do not permit splitting MSAs for the purpose of defining a wage area, except in very unusual circumstances (e.g., organizational relationships among closely located Federal activities). OPM proposes to redefine Old Saybrook town in Middlesex County and Somers and Somersville towns in Tolland County to the New Haven-Hartford area of application so that the entire Hartford-West Hartford-East Hartford, CT MSA is in one wage area. No FWS employees currently work in Middlesex or Tolland Counties. With these changes, the New Haven-Hartford area of application would include all of Fairfield, Litchfield, Middlesex, and Tolland Counties.

These changes would be effective for the full-scale wage survey in the New Haven-Hartford wage area scheduled to begin in April 2011.

New London, CT

This proposed rule would define the New London, CT, appropriated fund FWS wage area by county rather than by city and town boundaries. The proposed rule would define the New London wage area to include New London

County, CT, as the survey area and Windham County, CT, as the area of application.

The New London survey area currently includes 28 towns of New London County, CT, 1 town of Middlesex County, CT, and 2 towns of Washington County, RI. We propose that the New London survey area be changed to include all of New London County.

OPM regulations at 5 CFR 532.211 do not permit splitting Metropolitan Statistical Areas (MSAs) for the purpose of defining a wage area, except in very unusual circumstances (e.g., organizational relationships among closely located Federal activities). OPM proposes to redefine Old Saybrook town in Middlesex County, currently part of the New London survey area, to the New Haven-Hartford area of application so the entire Hartford-West Hartford-East Hartford, CT MSA is in one wage area. No FWS employees currently work in Middlesex County. OPM proposes to redefine Hopkinton and Westerly towns in Washington County, currently part of the New London survey area, to the Narragansett Bay, RI, area of application so the entire Providence-New Bedford-Fall River, RI-MA MSA is in one wage area. No FWS employees currently work in Hopkinton and Westerly towns.

These changes would be effective for the full-scale wage survey in the New London wage area scheduled to begin in September 2010.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and recommended these changes by consensus. Based on its review of the regulatory criteria for defining FWS wage areas, FPRAC recommended no other changes in the geographic definitions of the New Haven-Hartford and New London wage areas.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Kathie Ann Whipple,

Acting Director.

Accordingly, the U.S. Office of Personnel Management is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix C to subpart B, the wage area listing for the State of Connecticut is amended by revising the listings for New Haven-Hartford and New London; for the State of Massachusetts, by revising the listing for Central and Western Massachusetts; and for the State of Rhode Island, by revising the listing for Narragansett Bay, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

CONNECTICUT

New Haven-Hartford

Survey Area

Connecticut:
Hartford
New Haven

Area of Application. Survey area plus:

Connecticut:
Fairfield
Litchfield
Middlesex
Tolland

New London

Survey Area

Connecticut:
New London

Area of Application. Survey area plus:

Connecticut:
Windham

* * * * *

MASSACHUSETTS

* * * * *

Central and Western Massachusetts

Survey Area

Massachusetts:
The following cities and towns in:

Hampden County

Agawam
Chicopee
East Longmeadow
Feeding Hills
Hampden
Holyoke
Longmeadow
Ludlow
Monson
Palmer
Southwick
Springfield
Three Rivers
Westfield
West Springfield
Wilbraham

Hampshire County

Easthampton
Granby
Hadley
Northampton
South Hadley

Worcester County

Warren
West Warren

Area of Application. Survey area plus:

Massachusetts:
Berkshire
Franklin
Worcester (except Blackstone and Millville)
The following cities and towns in:

Hampshire County

Amherst
Belchertown
Chesterfield
Cummington
Goshen
Hatfield
Huntington
Middlefield
Pelham
Plainfield
Southampton
Ware
Westhampton
Williamsburg
Worthington

Hampden County

Blandford
Brimfield
Chester
Granville
Holland
Montgomery
Russell
Tolland
Wales

Middlesex County

Ashby
Shirley
Townsend

New Hampshire:
Belknap
Carroll
Cheshire
Grafton
Hillsborough
Merrimack
Sullivan

Vermont:
Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor

* * * * *

RHODE ISLAND

Narragansett Bay

Survey Area

Rhode Island:
Bristol
Newport
The following cities and towns:
Kent County
Anthony
Coventry
East Greenwich
Greene
Warwick
West Warwick
Providence County
Ashton
Burrillville
Central Falls
Cranston
Cumberland
Cumberland Hill
East Providence
Esmond
Forestdale
Greenville
Harrisville
Johnston
Lincoln
Manville
Mapleville
North Providence
North Smithfield
Oakland
Pascoag
Pawtucket
Providence
Saylesville
Slatersville
Smithfield
Valley Falls
Wallum Lake
Woonsocket
Washington County
Davisville
Galilee
Lafayette
Narragansett
North Kingstown
Point Judith
Quonset Point
Saunderstown
Slocum
Massachusetts:
The following cities and towns:
Bristol County
Attleboro
Fall River
North Attleboro
Rehoboth
Seekonk
Somerset
Swansea
Westport
Norfolk County
Caryville
Plainville
South Bellingham
Worcester County
Blackstone
Millville

Area of Application. Survey area plus:

Rhode Island:
The following cities and towns in:
Kent County
West Greenwich
Providence County
Foster
Glocester
Scituate
Washington County
Charlestown
Exeter
Hopkinton
New Shoreham
Richmond
South Kingstown
Westerly
Massachusetts:
The following cities and towns in:
Bristol County
Acushnet
Berkley
Dartmouth
Dighton
Fairhaven
Freetown
Mansfield
New Bedford
Norton
Raynham
Taunton

* * * * *

[FR Doc. E9–6364 Filed 3–23–09; 8:45 am]

BILLING CODE 6325–39–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

RIN 3038–AC40

Concept Release on Whether To Eliminate the Bona Fide Hedge Exemption for Certain Swap Dealers and Create a New Limited Risk Management Exemption From Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: In June and July of 2008, the Commodity Futures Trading Commission (''Commission'') issued a special call for information from swap dealers and index traders regarding their over-the-counter (''OTC'') market activities. In September of 2008, the Commission released a ''Staff Report on Commodity Swap Dealers and Index Traders with Commission Recommendations'' (the ''September 2008 Report'') with several preliminary Commission recommendations. Recommendation five of the September 2008 Report directs the staff to develop an advance notice of proposed rulemaking that would review whether to eliminate the *bona fide* hedge exemption for swap dealers and replace it with a limited risk management exemption that is conditioned upon, among other things, an obligation to report to the CFTC and applicable self-regulatory organizations when certain noncommercial swap clients reach a certain position level and/or a certification that none of a swap dealer's noncommercial swap clients exceed specified position limits in related exchange-regulated commodities.[1]

This concept release reviews the underlying statutory and regulatory background, as well as the regulatory history and relevant marketplace developments, as described in the September 2008 Report, which led to the foregoing recommendation. It then poses a number of questions designed to help inform the Commission's decision as to whether to proceed with the recommendation to eliminate the *bona fide* hedge exemption for swap dealers and replace it with a conditional limited risk management exemption; and if so, what form the new limited risk management exemptive rules should take and how they might be implemented most effectively.

DATES: Comments must be received on or before May 26, 2009.

ADDRESSES: Comments should be submitted to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments also may be sent by facsimile to (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Reference should be made to ''Whether to Eliminate the *Bona Fide* Hedge Exemption for Certain Swap Dealers and Create a New Limited Risk Management Exemption from Speculative Position Limits.'' Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following comment submission instructions.

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone (202) 418–5041, facsimile number (202) 418–5507, electronic mail *dheitman@cftc.gov.*

[1] Staff Report on Commodity Swap Dealers and Index Traders with Commission Recommendations, Commodity Futures Trading Commission, September 2008, at 6.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Framework

Speculative position limits have been a tool for the regulation of the U.S. futures markets since the adoption of the Commodity Exchange Act of 1936. Section 4a(a) of the Commodity Exchange Act (''Act''), 7 U.S.C. 6a(a), now provides [2] that excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities, or on electronic trading facilities with respect to a significant price discovery contract, causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

Accordingly, section 4a(a) of the Act provides the Commission with the authority to fix such limits on the amounts of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or on an electronic trading facility with respect to a significant price discovery contract, as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

This longstanding statutory framework providing for Federal speculative position limits was supplemented with the passage of the Futures Trading Act of 1982, which added section 4a(e) to the Act. That provision acknowledged the role of exchanges in setting their own speculative position limits and provided that limits set by exchanges and approved by the Commission would be subject to Commission enforcement.

Finally, the Commodity Futures Modernization Act of 2000 (''CFMA'') established designation criteria and core principles with which a designated contract market (''DCM'') must comply to receive and maintain designation. Among these, Core Principle 5 in section 5(d) of the Act states: Position Limitations or Accountability—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

B. Regulatory Framework

The regulatory structure based upon these statutory provisions consists of three elements, the levels of the speculative position limits, certain exemptions from the limits (for hedging, spreading/arbitrage, and other positions), and the policy on aggregating commonly owned or controlled accounts for purposes of applying the limits. This regulatory structure is administered under a two-pronged framework. Under the first prong, the Commission establishes and enforces speculative position limits for futures contracts on a limited group of agricultural commodities. These Federal limits are enumerated in Commission regulation 150.2, and apply to the following futures and option markets: Chicago Board of Trade (''CBOT'') corn, oats, soybeans, wheat, soybean oil, and soybean meal; Minneapolis Grain Exchange (''MGEX'') hard red spring wheat and white wheat; ICE Futures U.S. (formerly the New York Board of Trade) cotton No. 2; and Kansas City Board of Trade (''KCBT'') hard winter wheat.

Under the second prong, individual DCMs establish and enforce their own speculative position limits or position accountability provisions (including exemption and aggregation rules), subject to Commission oversight and separate authority to enforce exchange-set speculative position limits approved by, or certified to, the Commission. Thus, responsibility for enforcement of speculative position limits is shared by the Commission and the DCMs.[3]

Commission regulation 150.3, ''Exemptions,'' lists certain types of positions that may exceed the Federal speculative position limits. In particular, under § 150.3(a)(1), *bona fide* hedging transactions, as defined in § 1.3(z) of the Commission's regulations, may exceed the limits.[4] The Commission has periodically amended the exemptive rules applicable to Federal speculative position limits in response to changing conditions and practices in futures markets. These amendments have included an exemption from speculative position limits for the positions of multi-advisor commodity pools and other similar entities that use independent account controllers,[5] and an amendment to extend the exemption for positions that have a common owner but are independently controlled to include certain commodity trading advisors.[6] In 1987, the Commission also issued an agency interpretation clarifying certain aspects of the hedging definition.[7] The Commission has also issued guidance with respect to exchange speculative limits, including guidelines regarding the exemption of risk-management positions from exchange-set speculative position limits in financial futures contracts.[8] However, the last significant amendment to the Commission's exemptive rules was implemented in 1991.

C. Regulatory History and Marketplace Developments

The intervening 18 years have seen significant changes in trading patterns and practices in derivatives markets. As noted in the September 2008 Report, there has been an influx of new traders into the market, particularly commodity index traders (including pension and endowment funds, as well as individual investors participating in commodity index-based funds or trading programs). These investors are seeking exposure to commodities as an asset class, through passive, long term investment in commodity indexes, as a way of diversifying portfolios that might otherwise be limited to stocks and interest rate instruments.[9] New market participants also include swap dealers seeking to hedge price risk from OTC

[2] References in § 4a(a) to ''electronic trading facilitie(s) with respect to a significant price discovery contract'' were added to the CEA by Public Law 110–246, May 22, 2008 (the 2008 Farm Bill).

[3] Provisions regarding the establishment of exchange-set speculative position limits were originally set forth in CFTC regulation 1.61. In 1999, the Commission simplified and reorganized its rules by relocating the substance of regulation 1.61's requirements to part 150 of the Commission's rules, thereby incorporating within part 150 provisions for both Federal speculative position limits and exchange-set speculative position limits (see 64 FR 24038, May 5, 1999). With the passage of the Commodity Futures Modernization Act in 2000 and the Commission's subsequent adoption of the Part 38 regulations covering DCMs in 2001 (66 FR 42256, August 10, 2001), Part 150's approach to exchange-set speculative position limits was incorporated as an acceptable practice under DCM Core Principle 5—Position Limitations and Accountability. Section 4a(e) provides that a violation of a speculative position limit set by an exchange rule that has been approved by the Commission, or certified by a registered entity pursuant to § 5c(c)(1) of the Act, is also a violation of the Act. Thus, the Commission can enforce directly violations of exchange-set speculative position limits as well as those provided under Commission rules.

[4] Section 4a(c) of the Act specifically provides that speculative position limit rules issued by the Commission shall not apply to *bona fide* hedging transactions or positions as such terms shall be defined by the Commission.

[5] 53 FR 41563 (October 24, 1988).

[6] 56 FR 14308 (April 9, 1991).

[7] 52 FR 27195 (July 20, 1987).

[8] 52 FR 34633 (September 14, 1987).

[9] The argument has also been made that commodities act as a general hedge of liability obligations that are linked to inflation.

trading activity (frequently opposite the same commodity index traders described in the preceding sentences).

As described in the September 2008 Report, the development of the OTC swap industry is related to the exchange-traded futures and options industry in that a swap agreement [10] can either compete with or complement futures and option contracts.[11] Market participants often use swaps because they can offer the ability to customize contracts to match particular hedging or price exposure needs. In contrast, futures markets typically involve standardized contracts that, while traded in a highly liquid market, may not precisely meet the needs of a particular hedger or speculator.

Swap dealers, often affiliated with a bank or other large financial institution, act as swap counterparties to both commercial firms seeking to hedge price risks and speculators seeking to gain price exposure. The swap dealer, in turn, utilizes the more standardized futures markets to manage the net risk resulting from its OTC market activities.[12] In addition, some swap dealers also deal directly in the merchandising of physical commodities.

Beginning in 1991, the Commission staff granted *bona fide* hedge exemptions, in various agricultural futures markets subject to Federal speculative position limits, to a number of swap dealers who were seeking to manage price risk on their books as a result of their serving as market makers to their OTC clients. The first such hedge exemption involved a large commodity merchandising firm that engaged in commodity related swaps as a part of a commercial line of business. The firm, through an affiliate, wished to enter into an OTC swap transaction with a qualified counterparty (a large pension fund) involving an index based on the returns afforded by investments in exchange-traded futures contracts on certain non-financial commodities [13] meeting specified criteria. The commodities making up the index included wheat, corn and soybeans, all of which were (and still are) subject to Federal speculative position limits. As a result of the swap, the swap dealing firm would, in effect, be going short of the index. In other words, it would be required to make payments to the pension fund counterparty if the value of the index was higher at the end of the swap payment period than at the beginning. In order to protect itself against this risk, the swap dealer planned to establish a portfolio of long futures positions in the commodities making up the index, in such amounts as would replicate its exposure under the swap transaction. By design, the index did not include contract months that had entered the delivery period and the swap dealer, in replicating the index, stated that it would not maintain futures positions based on index-related swap activity into the spot month (when physical commodity markets are most vulnerable to manipulation and attendant unreasonable price fluctuations). With this risk mitigation strategy, the swap dealer's composite return on its futures portfolio would offset the net payments that the dealer would be required to make to the pension fund counterparty.

The futures positions the swap dealer would have to establish to cover its exposure on the swap transaction's domestic agricultural component would be in excess of the speculative position limits on wheat, corn and soybeans. Accordingly, the swap dealer requested, and was granted, a hedge exemption for those futures positions, which offset risks directly related to the OTC swap transaction. The swap transaction allowed the pension fund to add commodities exposure to its portfolio without resorting to exchange-based futures contracts (and their applicable position limits) through the OTC trade with the swap dealer. The pension fund could have gained exposure to commodities directly through exchange-based futures contracts, but would, of course, have been subject to applicable position limits.[14]

Similar hedge exemptions were subsequently granted in other cases where the futures positions clearly offset risks related to swaps or similar OTC positions involving both individual commodities and commodity indexes. These non-traditional hedges (*i.e.*, hedges not associated with dealings in the physical commodity) were all subject to specific limitations to protect the marketplace from potential ill effects. The limitations included: (1) The futures positions must offset specific price risk; (2) the dollar value of the futures positions would be no greater than the dollar value of the underlying risk; and (3) the futures positions would not be carried into the spot month.[15]

Separately, an issue had arisen regarding the classification of trading activity for purposes of the Commission's Commitments of Traders (''COT'') reports.[16] The COT reports, from their inception in 1924 (as an annual report by the USDA Grain Futures Administration), classified positions, based on trading activity, as ''hedging'' or ''speculative.'' After it was established in 1974, the Commission continued to publish these reports. However, in 1982, due to a change in CFTC large trader reporting requirements,[17] the COT reports began

[10] A swap is a privately negotiated exchange of one asset or cash flow for another asset or cash flow. In a commodity swap, at least one of the assets or cash flows is related to the price of one or more commodities.

[11] The bilateral contracts that swap dealers create can vary widely, from terms tailored to meet the needs of a specific customer, to relatively standardized contracts.

[12] Because swap agreements can be highly customized, and the liquidity for a particular swap contract can be low, swap dealers may also use other swaps and physical market positions, in addition to futures, to offset the residual risks of their swap books.

[13] The commodities comprising such indexes typically may include energy commodities, metals, world agricultural commodities (coffee, sugar, cocoa) and domestic agricultural commodities subject to Federal speculative position limits.

[14] The pension fund would have been limited in its ability to take on this commodities exposure directly, by putting on the long futures position itself, because the pension fund—having no offsetting price risk incidental to commercial cash or spot operations—would not have qualified for a hedge exemption with respect to the position. (*See* § 1.3(z) of the Commission's regulations.)

[15] More recently, Commission staff issued two no-action letters involving another type of index-based trading. (CFTC Letter 06–09, April 19, 2006, and CFTC Letter 06–19, September 6, 2006). Both cases involved trading that offered investors the opportunity to participate in a broadly diversified commodity index-based fund or program (''index fund''). The futures positions of these index funds differed from the futures positions taken by the swap dealers who had earlier received hedge exemptions. The swap dealer positions were taken to offset OTC swaps exposure that was directly linked to the price of an index. For that reason, Commission staff granted hedge exemptions to these swap dealer positions. On the other hand, in the index fund positions described in the no-action letters, the price exposure results from a promise or obligation to track an index, rather than from holding an OTC swap position whose value is directly linked to the price of the index. Commission staff believed that this difference was significant enough that the index fund positions would not qualify for a hedge exemption. Nevertheless, because the index fund positions represented a legitimate and potentially useful investment strategy, Commission staff granted the index funds no-action relief, subject to certain conditions intended to protect the futures markets from potential ill effects. These conditions included: (1) The positions must be passively managed; (2) they must be unleveraged (so that financial conditions should not trigger rapid liquidations); and (3) the positions must not be carried into the delivery month (when physical delivery markets are most vulnerable to manipulation or congestion).

[16] The COT reports are weekly reports, published by the Commission showing aggregate trader positions in certain futures and options markets. For a comprehensive history of the COT reports, see 71 FR 35627, June 21, 2006.

[17] The Series '03 large trader reports, in which individual traders had reported their futures positions to the CFTC and classified their trading activity as ''hedging'' or ''speculation,'' were suspended in 1981. Thereafter, position data was drawn from reports filed by futures commission merchants, which did not include such

classifying positions by reference to the trading entity as ''commercial'' or ''noncommercial.'' By 2006, trading practices had evolved to such an extent that the positions of non-traditional hedgers, including swap dealers who had been granted hedge exemptions and were included in the ''commercial'' category, represented a significant portion of the long side open interest in a number of major physical commodity futures contracts. This raised questions as to whether the COT reports could reliably be used to assess overall futures activity by traditional hedgers, *i.e.*, persons directly involved in the underlying physical commodity markets.

In January 2007, the Commission attempted to address this issue by initiating publication of a supplemental COT report, breaking out in a separate category the positions of ''index traders'' in certain physical commodity markets.[18] These index traders included managed funds, pension funds and other institutional investors seeking exposure to commodities as an asset class in an unleveraged and passively-managed manner using a standardized commodity index, as well as swap dealers holding long futures positions to hedge short OTC commodity index exposure opposite institutional traders such as pension funds (including those swap dealers described above who had received *bona fide* hedging exemptions). Nevertheless, substantial questions remained regarding the proper classification of trading activity by swap dealers and index traders. As noted in the September 2008 Report, ''futures market trades by swap dealers are essentially an amalgam of hedging and speculation by their clients. Thus, any particular trade that a swap dealer brings to the futures market may reflect information that originated with a hedger, a speculator, or some combination of both.'' [19]

In the spring of 2008, the Commission took note of ongoing concerns about the proper classification of swap dealer trading, along with a number of factors. In addition to an influx of new traders into the market, including non-traditional hedgers, such as index traders and swap dealers, futures markets had experienced other significant changes. Volume growth had increased fivefold over the preceding decade, and in the preceding year, the volatility and the price of oil and other commodities had reached unprecedented levels. Numerous Congressional hearings were held relating to these issues, and significant concern was expressed by members of Congress, academics, and market participants relating to commodity price volatility and the influx of non-traditional speculative activity in these markets. The Commission responded to these factors by issuing a special call for information from commodity swap dealers and index traders.

II. The Commission's Special Call to Swap Dealers and Index Traders

A. Substance of the Special Call

As noted in the September 2008 Report, in May and June of 2008, as part of certain initiatives relating to the energy and agricultural markets, the Commission announced it would gather more information regarding the off-exchange commodity trading activity of swap dealers and would revisit whether swap dealers' futures trading is being properly classified.[20] Thereafter, pursuant to its authority under regulation 18.05, the Commission issued a special call to swap dealers and index traders to gather pertinent information regarding these entities.[21]

The special call involved staff issuing 43 written requests to 32 entities and their sub-entities compelling these futures traders to produce data relating to their OTC market activities. Of the 43 requests, 16 were directed to swap dealers known to have significant commodity index swap business; 13 were directed to traders identified as swap dealers (but not known to engage in significant commodity index swap business) and who, at the time of the call, held futures positions that were large relative to Commission or exchange-set speculative position limits or accountability levels; and 14 were directed to commodity index funds (including asset managers and sponsors of exchange traded funds (ETFs) and exchange-traded notes (ETNs) whose returns are based upon a commodity index). The special call required the subject entities to provide data for month-end dates beginning December 31, 2007, and continuing through June 30, 2008.

While the September 2008 Report is based on this initial data, the special call remains ongoing, with the subject entities under a continuing obligation to provide data for each month-end date. The information requested by the special call, the data received, and the Commission's findings and recommendations based on that data are laid out in detail in the September 2008 Report, including its eight appendices and glossary.

B. Recommendation Five of the September 2008 Report

For purposes of this Concept Release, the Commission is concerned primarily with the Report's fifth recommendation, which provides as follows:

> Review Whether to Eliminate *Bona Fide* Hedge Exemptions for Swap Dealers and Create New Limited Risk Management Exemptions: The Commission has instructed staff to develop an advance notice of proposed rulemaking that would review whether to eliminate the *bona fide* hedge exemption for swap dealers and replace it with a limited risk management exemption that is conditioned upon, among other things: (1) An obligation to report to the CFTC and applicable self-regulatory organizations when certain noncommercial [22] swap clients reach a certain position level and/or (2) a certification that none of a swap dealer's noncommercial swap clients exceed specified position limits in related exchange-regulated commodities.

As noted in the body of the September 2008 Report, by eliminating the existing *bona fide* hedge exemption for swap dealers and replacing it with a limited risk management exemption that would essentially look through the swap dealer to its counterparty traders, Recommendation Five has the potential to bring greater transparency and accountability to the marketplace and to guard against possible manipulation.

While more information is needed to fully evaluate this recommendation, requiring swap dealers to monitor and restrict the position sizes of their counterparty traders, subject to CFTC reporting and audits, as a condition of obtaining and maintaining such an exemption, is a practicable way of ensuring that noncommercial counterparties are not purposefully evading the oversight and limits of the CFTC and exchanges, and

classifications. Therefore, the Commission was required to classify positions based on trader identification provided on each reportable trader's Form 40, Statement of Reporting Trader. In those reports, traders identify themselves as ''commercial'' or ''noncommercial'' traders. See *id.* at 35629–10 for more details.

[18] *See* Commission Actions in Response to the ''Comprehensive Review of the Commitment of Traders Reporting Program,'' Commodity Futures Trading Commission, December 5, 2006.

[19] September 2008 Report, at 1.

[20] *See* Commission press releases: *http://www.cftc.gov/newsroom/generalpressreleases/2008/pr5503-08.html* and *http://www.cftc.gov/newsroom/generalpressreleases/2008/pr5504-08.html.*

[21] Commission Regulation 18.05 provides that traders with reportable positions in any futures contract must, upon request, furnish to the Commission any pertinent information concerning the traders' positions, transactions, or activities involving the cash market as well as other derivatives markets, including their OTC business.

[22] In this context, a ''noncommercial'' counterparty would include any entity other than a traditional commercial hedger involved in the production, processing or marketing of a commodity.

that manipulation is not occurring outside of regulatory view.[23]

This Concept Release is intended to provide the Commission with information and comment that will help to inform the Commission's decision as to: (1) Whether to proceed with the recommendation to eliminate the *bona fide* hedge exemption for swap dealers and replace it with a conditional limited risk management exemption; and (2) if so, what form the new limited risk management exemptive rules should take and how they might be implemented most effectively.

III. Request for Comments

Commenters responding to this Concept Release are encouraged to provide their general views and comments regarding the appropriate regulatory treatment of swap dealers with respect to the existing *bona fide* hedge exemptions and a potential conditional, limited risk management exemption. In addition, commenters are requested to provide their views in response to the following specific questions.

A. General Advisability of Eliminating the Existing Bona Fide Hedge Exemption for Swap Dealers in Favor of a Limited Risk Management Exemption

1. Should swap dealers no longer be allowed to qualify for exemption under the existing *bona fide* hedge definition?

2. If so, should the Commission create a limited risk-management exemption for swap dealers based upon the nature of their clients (*e.g.*, being allowed an exemption to the extent a client is a traditional commercial hedger)?

3. If the *bona fide* hedge exemption were eliminated for swap dealers, and replaced with a new, limited risk management exemption, how should the new rules be applied to existing futures positions that no longer qualify for the new risk-management exemption? For example, should existing futures positions in excess of current Federal speculative position limits be grandfathered until the futures and option contract in which they are placed expire? Should swap dealers holding such position be given a time limit within which to bring their futures position into compliance with Federal speculative limits? Should swap dealers holding such positions be required to bring their futures positions into compliance with the Federal limits as of the effective date of the new rules?

[23] September 2008 Report, at 34.

B. Scope of a Potential New Limited Risk Management Exemption for Swap Dealers

4. The existing *bona fide* hedge exemptions granted by the Commission extend only to those agricultural commodities subject to Federal speculative position limits. Should the reinterpretation of *bona fide* hedging and any new limited risk management exemption extend to other physical commodities, such as energy and metals, which are subject to exchange position limits or position accountability rules?

C. Terms of a Potential New Limited Risk Management Exemption for Swap Dealers

5. If a new limited risk management exemption were to be permitted to the extent a swap dealer is taking on risk on behalf of commercial clients, how should the rules define what constitutes a commercial client?

6. How should the Commission (and, if applicable, the responsible industry self-regulatory organization (SRO)) and the swap dealer itself verify that a dealer's clients are commercial? Is certification by the dealer sufficient or would something more be required from either the dealer or the client? If so, what should be reported and how often—weekly, monthly, etc.?

7. For a swap dealer's noncommercial clients, should the rules distinguish between different classes of noncommercials—for example: (1) Clients who are speculators (*e.g.*, a hedge fund); (2) clients who are index funds trading passively on behalf of many participants; and (3) clients who are intermediaries (*e.g.*, another swap dealer trading on behalf of undisclosed clients, some of whom may be commercials)?

8. If a swap dealer were allowed an exemption for risk taken on against index-fund clients, how would the dealer satisfy the Commission that the fund is made up of many participants and is passively managed? Is certification by the dealer or fund sufficient or should the dealer or fund be required to identify the fund's largest clients?

9. If a swap dealer were allowed an exemption for risk taken on against another intermediary, how would the dealer satisfy the Commission that its intermediary client does not in turn have noncommercial clients that are in excess of position limits? Is certification by the dealer or second intermediary sufficient or should the dealer or intermediary be required to separately identify the intermediary's largest clients?

10. What futures equivalent position level should trigger the new limited risk management exemption reporting requirement? For example, under the rules of the on-going special call to swap dealers and index funds described earlier, a swap dealer must report any client in any individual month that exceeds 25% of the spot month limit, or the net long or short position of a client that in all months combined exceeds 25% of the all-months-combined limit.

11. If none of a swap dealer's clients exceed required reporting levels in a given commodity, or none of such clients exceed reporting levels in any commodity, what type of report should be filed with the Commission—*e.g.*, a certification by the swap dealer to the Commission to that effect?

12. Should there be an overall limit on a swap dealer's futures and option positions in any one market regardless of the commercial or noncommercial nature of their clients? For example, ''A swap dealer may not hold an individual month or all-months-combined position in an agricultural commodity named in § 150.2 in excess of 10% of the average combined futures and delta-adjusted option month-end open interest for the most recent calendar year.''

13. If a new limited risk-management exemption for swap dealers is created, what additional elements, other than those listed here, should be considered by the Commission in developing such an exemption?

D. Other Questions

14. How should the two index traders who have received no-action relief from Federal speculative position limits (*see* footnote 15) be treated under any new regulatory scheme as discussed herein?

15. What information should be required in a swap dealer's application for a limited risk management exemption?

Issued by the Commission this 17th day of March, 2009, in Washington, DC.

David Stawick,

Secretary of the Commission.

[FR Doc. E9–6187 Filed 3–23–09; 8:45 am]

BILLING CODE

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0107]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patuxent River, Patuxent River, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for ''U.S. Naval Air Station Patuxent River Air Expo 2009'', an aerial demonstration to be held over the waters of the Patuxent River adjacent to Patuxent River, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This proposed action would restrict vessel traffic in portions of the Patuxent River during the aerial demonstration.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before April 23, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0107 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

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

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, at 757–398–6204 or e-mail at *Dennis.M.Sens@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0107), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0107'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0107 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Fifth Coast Guard District, Prevention Division, 431 Crawford Street, Portsmouth, VA 23704 between 10 a.m. and 2 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

Background and Purpose

On May 23, 2009 and May 24, 2009, U.S. Naval Air Station Patuxent River, Maryland will sponsor the ''Patuxent River Air Expo '09''. The public event will consist of military and civilian aircraft performing low-flying, high speed precision maneuvers and aerial stunts over both the airfield at Naval Air Station Patuxent River and the waters of the Patuxent River. Federal Aviation Administration restrictions require that portions of the Blue Angels and aerobatic performance boxes take place over the waters of the Patuxent River. In addition to the air show dates, on May 21, 2009 and May 22, 2009, military and civilian aircraft performing in the air show will conduct practice and demonstration maneuvers and stunts over both the airfield at Naval Air Station Patuxent River and specified waters of the Patuxent River. To provide for the safety of participants, spectators and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the air shows, practices and demonstrations, and during other scheduled activities related to the air show.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Patuxent River. The regulated area includes waters of

the lower Patuxent River, located between Fishing Point and the base of the break wall marking the entrance to the East Seaplane Basin at Naval Air Station Patuxent River, which is approximately 500 yards long and 900 yards wide. The regulated area also includes waters of the lower Patuxent River, located between Hog Point and Cedar Point, which is approximately 2,000 yards long and 167 yards wide. The temporary special local regulations will be in effect from 9 a.m. on May 21, 2009 through 6 p.m. on May 24, 2009. The effect will be to restrict general navigation in the regulated area during the event and during scheduled activities related to the air show. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. A 75-yard restricted area, enforced by the Commanding Officer, U.S. Naval Air Station, Patuxent River, Maryland, is described in Title 33 Code of Federal Regulations, Section 334.180. These regulations, extending beyond the restricted area, are needed to control vessel traffic during the event to enhance safety of participants, spectators and transiting vessels.

Regulatory Analyses

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

Regulatory Planning and Review

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

Although this proposed rule prevents traffic from transiting a portion of the Patuxent River during the air show event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this segment of the Patuxent River during the event. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the air show. In some cases, vessels may be able to safely transit around or through the regulated area at various times with the permission of the Patrol Commander. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Fifth Coast Guard District listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this rule. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship

between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 34(h), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. A preliminary environmental analysis check list supporting this determination will be available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary section, § 100.35–T05–0107 to read as follows:

§ 100.35–T05–0107 Special Local Regulations for Marine Events; Patuxent River, Patuxent River, MD.

(a) *Regulated area.* The following locations are regulated areas:

(1) All waters of the lower Patuxent River, near Solomons, Maryland, located between Fishing Point and the base of the break wall marking the entrance to the East Seaplane Basin at Naval Air Station Patuxent River, within an area bounded by a line connecting position latitude 38°17′39″ N, longitude 076°25′47″ W; thence to latitude 38°17′47″ N, longitude 076°26′00″ W; thence to latitude 38°18′09″ N, longitude 076°25′40″ W; thence to latitude 38°18′00″ N, longitude 076°25′25″ W, located along the shoreline at U.S. Naval Air Station Patuxent River, Maryland.

(2) All waters of the lower Patuxent River, near Solomons, Maryland, located between Hog Point and Cedar Point, within an area bounded by a line drawn from a position at latitude 38°18′41″ N, longitude 076°23′43″ W; to latitude 38°18′16″ N, longitude 076°22′35″ W; thence to latitude 38°18′12″ N, longitude 076°22′37″ W; thence to latitude 38°18′36″ N, longitude 076°23′46″ W, located adjacent to the shoreline at U.S. Naval Air Station Patuxent River, Maryland. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) *Enforcement period:* This section will be enforced as follows:

(1) During the air show practice from 9 a.m. to 5 p.m. on May 21, 2009.

(2) Air show practice and modified show from 9 a.m. to 5 p.m. on May 22, 2009.

(3) ''Meet the Performers Party'' (at Cedar Point Officers' Club) performance from 6 p.m. to 9 p.m. on May 22, 2009.

(4) Air show performances from 9 a.m. to 5 p.m. May 23 and 24, 2009.

Dated: March 16, 2009.

Neil O. Buschman,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. E9–6426 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0018]

RIN 1625–AA00

Safety Zone: Hampton Roads Air Show, Back River, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a safety zone on the Back

River in the vicinity of Hampton, VA during the Hampton Roads Air Show. This action is intended to restrict vessel traffic movement in the vicinity of Willoughby Point, VA to protect mariners from the hazards associated with air show events. We propose enforcement of this safety zone from 5 p.m. to 9 p.m. on April 24, 2009, and daily from 9 a.m. to 5 p.m. on April 25, and April 26, 2009.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before April 14, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0018 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

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

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Lieutenant Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0018), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0018'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0018 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Commander, Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

Background and Purpose

Coast Guard Sector Hampton Roads has been notified that Langley Air Force Base will host an air show event in the vicinity of Willoughby Point, VA immediately above the Back River, Hampton, VA. The event is scheduled to take place April 24, 2009 through April 26, 2009. In recent years, there have been unfortunate instances of jets and planes crashing during performances at air shows. Along with the jet or plane crash, there is typically a wide area of scattered debris that also damages property and could cause significant injury or death to mariners observing the air show. Due to the need to protect mariners transiting on the Back River immediately below the Air Show from the hazards associated with a potential jet or plane crash, the Coast Guard proposes that a safety zone bound by the following coordinates be established: 37°05′35″ N/076°20′47″ W; thence to 37°05′43″ N/076°20′14″ W; thence to 37°05′19″ N/076°20′02″ W; thence to 37°05′12″ N/076°20′18″ W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone on specified waters of the Back River bound by the following coordinates: 37°05′35″ N/076°20′47″ W; thence to 37°05′43″ N/076°20′14″ W; thence to 37°05′19″ N/076°20′02″ W; thence to 37°05′12″ N/076°20′18″ W (NAD 1983), in the vicinity of Willoughby Point on the Back River, Hampton, Virginia. This safety zone is proposed in the interest of public safety during the Hampton Roads Air Show and will be enforced from 5 p.m. to 10 p.m. on April 24, 2009 and from 9 a.m to 5 p.m daily on April 25, 2009 and April 26, 2009. Access to the safety zone will be restricted during the specified date and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this proposed regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

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

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone will only be in place for a limited duration. Before the effective period of April 24, 2009 to April 26, 2009, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This proposed rule involves a temporary safety zone that will be in effect for less than one week. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule. A preliminary ''Environmental Analysis Check List'' supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule'').

List of Subjects 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–0018 to read as follows:

165.T05–0018 Safety Zone: Hampton Roads Air Show, Back River, Hampton, VA

(a) *Regulated Area.* The following area is a safety zone: All waters in the vicinity of Willoughby Point on Back River within the area bounded by coordinates 37°05′35″ N / 076°20′47″ W, thence to 37°05′43″ N / 076°20′14″ W, thence to 37°05′19″ N / 076°20′02″ W, thence to 37°05′12″ N / 076°20′18″ W. (NAD 1983), in Hampton, VA.

(b) *Definition:* For the purposes of this part, Captain of the Port Representative means: any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement Period: This regulation will be enforced from 5 p.m. to 9 p.m. on April 24, 2009 and 9 a.m. to 5 p.m. daily on April 25, 2009 and April 26, 2009.

Dated: January 30, 2009.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E9–6428 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1096]

RIN 1625–AA00

Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of several safety zones in the Captain of the Port Portland, Oregon zone for annual fireworks displays that take place around the 4th of July each year. The safety zones are necessary to help ensure the safety of the maritime public during the events and will do so by prohibiting all persons and vessels from entering the safety zones unless authorized by the Captain of the Port Portland, Oregon or his designated representatives.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before May 26, 2009 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2008–1096 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

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

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call BM1 Joshua Lehner, Coast Guard Sector Portland, 6767 N. Basin Ave., Portland, OR 97217–3992, telephone (503) 240–9311. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1096), indicate the specific section of this

document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–1096'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–1096 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or Coast Guard Sector Portland, 6767 N. Basin Ave., Portland, OR 97217–3992, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

Background and Purpose

Fireworks displays create hazardous conditions for the maritime public as a result of the large number of vessels that congregate near the displays as well as the noise, falling debris, and explosions that occur during the events. The establishment of safety zones around the displays helps to ensure the safety of the maritime public by prohibiting all persons and vessels from coming close to the fireworks displays and their associated hazards.

Discussion of Proposed Rule

The proposed rule will establish several safety zones in the Captain of the Port Portland, Oregon zone for annual fireworks displays that take place around the 4th of July each year. The safety zones are necessary to help ensure the safety of the maritime public during the events and will do so by prohibiting all persons and vessels from entering the safety zones unless authorized by the Captain of the Port Portland, Oregon or his designated representatives.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this finding because the rule will have little if any economic impact since the safety zones it establishes will only be enforced for several hours one day each year and will not significantly impede maritime traffic transiting the areas where they are located.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels wishing to transit one of the safety zones established by this rule. The rule will not have a significant economic impact on a substantial number of small entities, however, because the safety zones it establishes will only be enforced for several hours one day each year and will not significantly impede maritime traffic transiting the areas where they are located.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact BM1 Joshua Lehner, Coast Guard Sector Portland, 6767 N. Basin Ave., Portland, OR 97217–3992, telephone (503) 240–9311. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of several safety zones for fireworks displays. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.1315 by adding paragraphs (a)(15)–(24) and revising paragraphs (b) and (c) to read as follows:

§ 165.1315 Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone.

(a) * * *

(15) *Arlington Chamber of Commerce Fireworks Display, Arlington, OR:*

(i) *Location.* All waters of the Columbia River encompassed by lines connecting the following points in the vicinity of Arlington, Oregon: From the southern shore of the Columbia River at 45°43′23″ N 120°12′11″ W, thence to 45°43′29″ N 120°12′12″ W, thence to 45°43′31″ N 120°12′06″ W, thence to the southern shore of the Columbia River at 45°43′26″ N 120°12′02″ W.

(ii) *Enforcement period.* This safety zone is enforced from approximately 8:30 p.m. to approximately 11:30 p.m. for one day during the last week of June or the first week of July each year.

(16) *East County 4th of July Fireworks, Gresham, OR:*

(i) *Location.* All waters of the Columbia River encompassed in a 500 foot radius around position 45°33′33″ N 122°27′03″ W.

(ii) *Enforcement period.* This safety zone is enforced from approximately 8:30 p.m. to approximately 11:30 p.m. for one day during the first week of July each year.

(17) *Port of Cascade Locks July 4th Fireworks Display, Cascade Locks, OR:*

(i) *Location.* All waters of the Columbia River encompassed in a 500 foot radius around position 45°40′16″ N 121°53′38″ W.

(ii) *Enforcement period.* This safety zone is enforced from approximately 8:30 p.m. to approximately 11:30 p.m. for one day during the first week of July each year.

(18) *Astoria Regatta Association Fireworks Display, Astoria, OR:*

(i) *Location.* All waters of the Columbia River encompassed by lines connecting the following points in the vicinity of Astoria, Oregon: From the southern shore of the Columbia River at 46°11′34″ N 123°48′33″ W, thence to 46°11′52″ N 123°48′35″ W, thence to

46°11′52″ N 123°48′19″ W, thence to the southern shore of the Columbia River at 46°11′39″ N, 123°48′13″ W.

(ii) *Enforcement period.* This safety zone is enforced from approximately 8:30 p.m. to approximately 11:30 p.m. one day during the second weekend of August each year.

(19) *City of Washougal July 4th Fireworks Display, Washougal, WA:*

(i) *Location.* All waters of the Columbia River encompassed by lines connecting the following points in the vicinity of Washougal, Washington: From the northern shore of the Columbia River at 45°33′50″ N 122°20′16″ W, thence to 45°33′42″ N 122°20′29″ W, thence to 45°33′53″ N 122°20′39″ W, thence to the northern shore of the Columbia River at 45°35′04″ N 122°20′35″ W.

(ii) *Enforcement period.* This safety zone is enforced from approximately 8:30 p.m. to approximately 11:30 p.m. one day during the first week of July each year.

(20) *City of St. Helens 4th of July Fireworks Display, St. Helens, OR:*

(i) *Location.* All waters of the Columbia River encompassed in a 1200 foot radius around position 45°51′51″ N 122°47′22″ W.

(ii) *Enforcement period.* This safety zone is enforced from approximately 8:30 p.m. to approximately 11:30 p.m. one day during the first week of July each year.

(21) *Waverly Country Club 4th of July Fireworks Display, Milwaukie, OR:*

(i) *Location.* All waters of the Willamette River encompassed by lines connecting the following points in the vicinity of Milwaukie, Oregon: From 45°27′10″ N 122°29′35″ W, thence to 45°27′12″ N 122°39′25″ W, thence to 45°26′56″ N 122°39′15″ W, thence to 45°26′52″ N 122°39′25″ W.

(ii) *Enforcement period.* This safety zone is enforced from approximately 8:30 p.m. to approximately 11:30 p.m. one day during the first week of July each year.

(22) *Booming Bay Fireworks, Westport, WA:*

(i) *Location.* All waters of Grays Harbor encompassed in a 600 foot radius around position 46°54′14″ N 124°06′08″ W.

(ii) *Enforcement period.* This safety zone is enforced from approximately 8:30 p.m. to approximately 11:30 p.m. one day during the last week of June or the first week of July each year.

(23) *Hood River 4th of July, Hood River, OR:*

(i) *Location.* All waters of the Columbia River encompassed in a 1000 foot radius around position 45°42′58″ N 121°30′31″ W.

(ii) *Enforcement period.* This safety zone is enforced from 8:30 p.m. to 11:30 p.m. one day during the last week of June or the first week of July each year.

(24) *Rufus 4th of July Fireworks, Rufus, OR:*

(i) *Location.* All waters of the Columbia River encompassed in a 500 foot radius around position 45°41′30″ N 120°45′47″ W.

(ii) *Enforcement period.* This safety zone is enforced from approximately 8:30 p.m. to approximately 11:30 p.m. for one day during the last week of June or the first week of July each year.

(b) *Regulations.* In accordance with § 165.23 of this part, no person may enter or remain in these safety zones unless authorized by the Captain of the Port, Portland or his/her designated representative. Also in accordance with § 165.23 of this part, no person may bring into, cause to be brought into, or allow to remain in these safety zones any vehicle, vessel, or object unless authorized by the Captain of the Port, Portland or his/her designated representative.

(c) *Notice.* In accordance with § 165.7 of this part, notification of the specific period of enforcement for each of these safety zones may be made by marine broadcast, local notice to mariners, local news media, distribution in leaflet form, on-scene oral notice, and/or publication in the **Federal Register**.

Dated: March 3, 2009.

F.G. Myer,

Captain, U.S. Coast Guard, Captain of the Port Portland, Oregon.

[FR Doc. E9–6334 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. RM2009–3; Order No. 192]

Postal Rates

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission announces a new proceeding to address workshare discount methodologies in First-Class Mail and Standard Mail. The proceeding will allow certain issues raised in Docket No. R2009–2 to be fully addressed.

DATES: Comments due May 26, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: In a concurrently issued order in Docket No. R2009–2, the Commission largely approves the Postal Service's planned market dominant price changes scheduled to take effect May 11, 2009. That approval includes a commitment to institute a rulemaking proceeding to examine methodologies underlying the calculation of workshare discounts. By this order, the Commission fulfills that commitment.

In Docket No. R2009–2, the Postal Service proposes workshare discounts for First-Class Mail and Standard Mail that are not based on established workshare cost avoidance methodologies. In First-Class, the Postal Service did not use the existing benchmark, bulk metered mail, for calculating workshare discounts and instead based the discounts on presort First-Class Mail delinked from single-piece First-Class Mail. In Standard Mail, the Postal Service did not use the existing methodology based on costs avoided by shape between Basic and High Density, and High Density and Saturation.

In each instance, the Postal Service offers a legal rationale for its approach. It notes First-Class Mail Presort and Single-Piece Letters are separate products and contends that the reference to ''each market-dominant product'' in the reporting language of U.S.C. 3652(b) therefore excludes the inter-product automation Mixed AADC presort letter discount from the limitations of U.S.C. 3622(e).[1] With respect to Standard Mail, the Postal Service argues that density differences between Carrier Route Basic and High Density, and between High Density and Saturation are not the result of ''presorting, prebarcoding, handling, or transportation'' as worksharing is defined under 39 U.S.C. 3622(e)(1).[2]

Numerous parties in both Docket Nos. R2009–2 and ACR2008 contest the Postal Service's rationales.[3] Some

[1] *See* Docket No. R2009–2, Response of the United States Postal Service to Chairman's Information Request No. 1, February 20, 2009; and Docket No. ACR2008, Responses of the United States Postal Service to Commission Order No. 169, January 21, 2009, at 17–18 (Response to Order No. 169).

[2] *See* Docket No. R2009–2, Responses of the United States Postal Service to Questions 1–12 of Chairman's Information Request No. 4, March 4, 2009, at 12–13; and Response to Order No. 169 at 17–18.

[3] *See, e.g.*, Docket No. R2009–2, Public Representative Comments in Response to Notice of Price Adjustment for Market-Dominant Price Adjustment, March 2, 2009, at 9–12; Initial

Continued

support the Postal Service's methodologies.[4] As the Commission explained in Order No. 191, also issued today, the expedited pre-implementation review of proposed market dominant rate adjustments under section 3622 precludes any meaningful examination of departures from established rate methodologies and analytical principles.

In Docket Nos. R2008–1 and ACR2007, various parties suggested changes to the existing workshare discount methodologies and methods for measuring cost avoidance, which, given the expedited nature of those proceedings, the Commission declined to hear. *See* Docket No. ACR2007, Annual Compliance Determination FY2007, March 27, 2008, at 18; Docket No. R2008–1, Review of Postal Service Notice of Market Dominant Price Adjustment, March 17, 2008, at 19.

Consequently, pursuant to 39 U.S.C. 503, 3622(a), and 3652(e), the Commission is initiating this proceeding to afford the Postal Service (and interested persons supporting its rationales) an opportunity to address the legal, factual, and economic underpinnings of the methodologies used by the Postal Service to develop its proposed First-Class Mail and Standard Mail discount rates in Docket No. R2009–2. In addition, interested persons, including the Postal Service, may submit alternative workshare discount rate design and cost avoidance calculation methodologies. Alternative methodologies must address the legal, factual, and economic bases underlying them.[5] The foregoing presentations are due no later than 60 days after publication of this order in the **Federal Register**.

After an opportunity to review those presentations, the Commission will issue a procedural schedule to provide interested persons an opportunity to submit responsive presentations. Depending on the breadth and complexity of issues presented, the Commission may provide an opportunity for hearings and may find it appropriate to bifurcate the proceeding.

Based on the record developed in this proceeding, the Commission will evaluate whether any change in the established workshare discount methodologies, including methods to calculate avoided costs, is warranted. While the established methodologies will continue to be employed until (and if) changed, the Commission emphasizes that the intent of this proceeding is to provide a forum for a thorough examination of these important issues.

Pursuant to 39 U.S.C. 505, the Commission designates Emmett Rand Costich and James Callow to serve as Public Representative to represent the interests of the general public in this proceeding.

It is Ordered:

1. As discussed in the body of this order, initial presentations may be filed by any interested person no later than 60 days after publication of this order in the **Federal Register**.

2. Following receipt of the initial presentations, the Commission will issue a further procedural schedule in this proceeding.

3. Pursuant to 39 U.S.C. 505, Emmitt Rand Costich and James Callow are designated as the Public Representative in this proceeding to represent the interests of the general public.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E9–6197 Filed 3–23–09; 8:45 am]

BILLING CODE 7710–FW–P

Comments of American Postal Workers Union, AFL–CIO, March 2, 2009, at 1–5; Comments of the Greeting Card Association, March 2, 2009, at 2; Comments of Newspaper Association of America on Notice of Market-Dominant Price Adjustment, March 2, 2009, at 10–11; Docket No. ACR2008, Initial Comments of the Major Mailers Association on the Annual Compliance Report of the United States Postal Service, January 30, 2009, at 1; and Initial Comments of American Postal Workers Union, AFL–CIO, January 30, 2009, at 3–4.

[4] *See, e.g.*, Docket No. R2009–2, Comments of Valassis Direct Mail Inc. and the Saturation Mailers Coalition, March 2, 2009, at 5.

[5] Statements, if any, submitted in support of a party's position must comply with rule 3001.31 of the Commission's Rules of Practice and Procedure.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–8784–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent for Partial Deletion of the Mouat Industries Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a Notice of Intent for Partial Deletion of the surface and subsurface soils component of the Mouat Industries Superfund Site (Site) located in Columbus, Montana, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Montana, through the Montana Department of Environmental Quality (MDEQ), have determined that all appropriate response actions at these identified parcels under CERCLA, other than five-year reviews and operation and maintenance, have been completed. However, this deletion does not preclude future actions under Superfund. This partial deletion pertains to the surface and subsurface soils component of the Mouat Industries Superfund Site. The groundwater component will remain on the NPL and is not being considered for deletion as part of this action.

DATES: Comments must be received by April 23, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *http://www.regulations.gov*. Follow on-line instructions for submitting comments.
- *E-mail: hoogerheide.roger@epa.gov*.
- *Fax:* (406) 457–5056.
- *Mail:* Roger Hoogerheide, Remedial Project Manager; U.S. EPA Montana Office; Federal Building, Suite 3200; 10 West 15th Street; Helena, MT 59626.
- *Hand delivery:* U.S. EPA Montana Office; Federal Building, Suite 3200; 10 West 15th Street; Helena, MT 59626. 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–SFUND–1986–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The

http://www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or are available for viewing and copying at the Site information repositories located at: U.S. EPA Montana Office, Federal Building, Suite 3200, 10 West 15th Street, Helena, MT 59626, (406) 457–5000.

Viewing Hours: Mon.–Fri. 8 a.m. to 5 p.m., excluding holidays. Stillwater County Library, 27 North 4th Street; PO Box 266, Columbus, MT 59019–0266, 406–322–5009. Hours: (Library hours vary)

FOR FURTHER INFORMATION CONTACT: Roger Hoogerheide, Remedial Project Manager, 8MO, *hoogerheide.roger@epa.gov*, U.S. EPA, Region 8—Montana Office, 10 W. 15th St., Suite 3200, Helena, Montana 59626, (406) 457–5031 or 1–866–457–2690, extension 5031.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Partial Deletion for the surface and subsurface soils component of the Mouat Industries Superfund Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this partial deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: March 10, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. E9–6143 Filed 3–23–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2008-0128; MO 922105 0083-B2]

RIN 1018-AW72

Endangered and Threatened Wildlife and Plants; Determination of Significant Portion of the Range of Marine and Estuarine Areas of the Southwestern Washington/Columbia River Distinct Population Segment of Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On July 5, 2002, we, the U.S. Fish and Wildlife Service (Service), published a withdrawal of the proposed rule to list the Southwestern Washington/Columbia River distinct population segment (DPS) of the coastal cutthroat trout (*Oncorhynchus clarki clarki*) as threatened under the Endangered Species Act of 1973, as amended (Act). As a result of litigation, we are now reconsidering our withdrawal of the proposed rule with specific regard to the question of whether the marine and estuarine areas may constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout, and if so, whether that portion is threatened or endangered. We hereby notify the public, other concerned governmental agencies, the scientific community, industry, and any other interested party of our request for information, data, or comments on the marine and estuarine areas of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout, with particular regard to whether these areas constitute a significant portion of the range of the DPS under the Act, and if so, whether the subspecies is threatened or endangered in those areas.

DATES: We will accept information received on or before April 23, 2009.

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

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

• U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R1-ES-2008–0128; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the ''Public Comments'' section below for more information).

FOR FURTHER INFORMATION CONTACT: Paul Henson, Ph.D, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone 503-231-6179; facsimile 503-231-6195. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

To ensure that any action resulting from this request for information will be

based on the best scientific and commercial data available and will be as accurate as possible, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties. We particularly seek comments concerning:

(1) Information on those marine and estuarine areas that could potentially constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout, and the suggested boundaries of those areas;

(2) Information on whether and why those marine and estuarine areas constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout as defined by sections 3(6) or 3(20) of the Act; and

(3) Other information on the status, distribution, population trends, abundance, habitat conditions, or threats specific to those marine and estuarine areas that could constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout.

(4) Information on the effects of potential threat factors that are the basis for a species' listing determination under section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*; the ''five listing factors'') specifically with respect to those marine and estuarine areas of the Southwestern Washington/Columbia River DPS of coastal cutthroat trout. The five listing factors considered under the Act are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) Inadequacy of existing regulatory mechanisms; and

(e) Other natural or manmade factors affecting its continued existence.

We define ''estuary'' to mean a semi-enclosed coastal body of water that has a free connection with the open sea and within which sea water is measurably diluted with fresh water derived from land drainage (Lauff 1967, as cited in ISAB 2000, p. 2). For example, although the Columbia River is tidally influenced up to Bonneville Dam at river mile 146 (235 river kilometers), saltwater intrusion is generally limited to the lower 23 river miles (37 river kilometers) (near Harrington Point) at the minimum regulated monthly flow (Neal 1972, as cited in ISAB 2000, p. 2), although when lower daily flows occur salt intrusion can extend past Pillar Rock at river mile 28 (45 river kilometers).

Please note that comments merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, because section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this request for information by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including any personal identifying information—will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this review, will be available for public inspection at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

The coastal cutthroat trout is one of 10 formally described subspecies of cutthroat trout (Behnke 1992, p. 53). Coastal cutthroat trout are distributed along the Pacific Coast of North America from Prince William Sound in Alaska to the Eel River in California (Behnke 1992, p. 65; Trotter 1997, p. 7), and inland from the Coast Range of Alaska to roughly the crest of the Cascades of Washington and Oregon (Trotter 1997, p. 7). In January 1999, the National Marine Fisheries Service (NMFS) completed a status review of coastal cutthroat trout from Washington, Oregon, and California. The status review identified six Evolutionarily Significant Units (ESUs) across this range based on biogeographic, life history, and genetic information. The six ESUs identified were Puget Sound, Olympic Peninsula, Southwestern Washington/Columbia River, Upper Willamette River, Oregon Coast, and Southern Oregon/California Coasts (Johnson *et al.* 1999, p. 125).

On April 5, 1999, the NMFS and the Service issued a joint proposal to list the Southwestern Washington/Columbia River population of the coastal cutthroat trout as a threatened species under the Act (64 FR 16397). Although the NMFS uses the term ESU for such a population, when the Service assumed sole regulatory jurisdiction of the coastal cutthroat trout under the Act in April 2000 (65 FR 21376; April 21, 2000), we began using the term Distinct Population Segment (DPS), which is the terminology normally utilized for such analogous entities by the Service.

The Southwestern Washington/Columbia River DPS that is the subject of this request for information includes the Columbia River and its tributaries from the mouth to the Klickitat River on the Washington side of the river and Fifteenmile Creek on the Oregon side; the Willamette River and its tributaries from its confluence with the Columbia upstream to Willamette Falls; Willapa Bay and its tributaries; and Grays Harbor and its tributaries. The DPS inhabits portions of five ecoregions: the Coast Range, Puget Lowland, Cascades, Willamette Valley, and Eastern Cascades. Most of the DPS occurs in the Coast Range, Puget Lowland, and Cascades. A more detailed description of the DPS can be found in the April 5, 1999, proposed rule (64 FR 16397).

Relatively little is known about the specific life history and habitat requirements of coastal cutthroat trout. Coastal cutthroat trout spend more time in the freshwater environment and make more extensive use of this habitat, particularly small streams, than do most other Pacific salmonids (Johnson *et al.*1999, p. 44). The life history of coastal cutthroat trout may be one of the most complex of any Pacific salmonid. Coastal cutthroat trout exhibit a variety of life history strategies across their range that includes three basic variations: resident or primarily nonmigratory, freshwater migrants, and marine migrants (Northcote 1997, p.20; Johnson *et al.* 1999, pp. 11, 44-45). Residents may stay within the same stream segment their entire life. Freshwater migrants may make migrations from small tributaries to larger tributaries or rivers, or may migrate from tributary streams to lakes or reservoirs. Marine migrations (anadromy) are generally thought to be limited to near-shore marine areas; individuals may not venture out of the estuary in some cases (Trotter 1997, p.10).

There are numerous exceptions to these generalized behaviors. We also lack observations of definitive genetic relationships between individual or population-wide migratory strategies (Behnke 1997, p. 5). In areas above long-standing barriers, coastal cutthroat trout are limited to resident or freshwater migratory life history strategies. In areas accessible to the ocean, all three life history strategies (resident, freshwater migratory, and anadromous) are likely to be expressed in the same area. Coastal cutthroat trout appear to exhibit very flexible life history strategies. The extent to which individuals expressing these various strategies are isolated from other life history forms is largely unknown, though there is growing evidence that individuals may express multiple life history behaviors in their life time (Johnson *et al.* 1999, pp. 40-43). The diverse life history strategies shown by coastal cutthroat trout are not well understood, but are thought to represent unique adaptations to local environments and the subspecies' response to environmental variability and unpredictability.

For additional information on the biology, habitat, and range of coastal cutthroat trout, please refer to the proposed rule (64 FR 16397; April 5, 1999) and withdrawal of the proposed rule (67 FR 44934; July 5, 2002).

Previous Federal Actions

The NMFS and the Service jointly published a proposed rule to list the Southwestern Washington/Columbia River ESU (later DPS) of coastal cutthroat trout as a threatened population under the distinct vertebrate population segment provision of the Act on April 5, 1999 (64 FR 16397). In that proposed rule, we noted the uncertainty regarding which agency, the NMFS or the Service, had jurisdiction over the coastal cutthroat trout, and we committed to notify the public once the issue had been resolved. Subsequently, the time to make a final determination on the proposed rule was extended for an additional 6 months, from April 5, 2000 to October 5, 2000, due to substantial scientific disagreement about the status of the population; this action further opened an additional 30–day comment period (65 FR 20123; April 14, 2000). On April 21, 2000, the NMFS and the Service published a notice of the Service's assumption of sole jurisdiction for coastal cutthroat trout under the Act (65 FR 21376). On June 2, 2000, we again reopened the comment period on the proposed rule and announced a public hearing to be held in Ilwaco, Washington, on June 20, 2000, to allow all interested parties to submit oral or written comments on the proposal (65 FR 35315).

On July 14, 2000, we published a notice to clarify the take prohibitions for the Southwestern Washington/Columbia River DPS of coastal cutthroat trout that would apply if the proposed listing were to be finalized and provided a 30–day public comment period on the list of activities that would, and would not, likely constitute a violation of section 9 of the Act (65 FR 43730). The comment period on the clarification of take prohibitions was reopened on September 6, 2000 (65 FR 53974), and a hearing was held September 21, 2000, in Aberdeen, Washington, based on a request during the initial public comment period. In addition, the comment period on the proposed rule to list the Southwestern Washington/Columbia River DPS of coastal cutthroat trout was again reopened for an additional 30 days on November 23, 2001 (66 FR 58706).

On July 5, 2002, we published a notice of withdrawal of the proposed rule to list the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout as threatened (67 FR 44934). The notice set forth the following bases for our determination that the DPS did not meet the listing criteria as a threatened species: (1) new data indicating that coastal cutthroat trout are more abundant in southwest Washington than was previously thought and that population sizes were comparable to those of healthy populations in other areas; (2) new information and analyses calling into question prior interpretation of the size of the anadromous portion of the population in the Columbia River and indicating higher numbers than previously described; (3) new data and analyses no longer showing declining adult populations in the Grays Harbor tributaries; (4) new analyses calling into question the past interpretation of trend data, and therefore the magnitude of the trend in the anadromous portion of the population in the Columbia River; (5) new information describing the production of anadromous progeny by non-anadromous and above-barrier cutthroat trout; and, (6) two large-scale Habitat Conservation Plans (HCPs) and significant changes in Washington Forest Practices Regulations substantially reducing threats to aquatic and riparian habitat on forest lands in Washington. The withdrawal notice concluded that, based on reduced threats and new information and understanding regarding the status of the DPS, the Southwestern Washington/Columbia River DPS of coastal cutthroat trout was not in danger of becoming endangered in the foreseeable future, and therefore did not meet the definition of a threatened species.

On February 3, 2005, the Center for Biological Diversity, Oregon Natural Resources Council, Pacific Rivers Council, and WaterWatch filed a legal challenge to the Service's withdrawal of the proposed listing in the U.S. District Court for the District of Oregon (*Center for Biological Diversity, et al.* v. *U.S. Fish and Wildlife Service*, Case No. 05-165-KI). The Court ruled that the Service's decision to withdraw the proposed rule complied with the Act and was not arbitrary and capricious, and dismissed the action on November 16, 2005. Plaintiffs appealed. On April 18, 2008, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court's decision in part and reversed the decision in part. The Ninth Circuit found no error in the Service's determination that the DPS as a whole did not merit listing, but held that the Service had failed to consider whether the marine and estuarine portions of the DPS constitute a significant portion of the range of the coastal cutthroat trout within that DPS under the Act (*Center for Biological Diversity, et al.* v. *U.S. Fish and Wildlife Service*, 2008 U.S. App. LEXIS 8701 (9th Cir. 2008)). The Ninth Circuit reversed the district court's decision and remanded the matter to the district court.

On July 1, 2008, the U.S. District Court for the District of Oregon issued an amended order remanding the listing decision to the Service for further consideration consistent with the opinion of the Ninth Circuit. Specifically, the court directed the Service to consider whether the estuary and other marine areas constitute a significant portion of the range of the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout. The Service will complete its review of the best available information, including data, information, and comments submitted during this comment period, to comply with that order.

At this time, we are soliciting new information on the coastal cutthroat trout in the marine and estuarine areas of the Southwestern Washington/Columbia River DPS, and specifically in regard to whether these areas represent a significant portion of the range of this DPS. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, or copies of any pertinent publications, reports, or letters by knowledgeable sources. We request information regarding data from any systematic surveys, as well as any studies or

analysis of data regarding population size or trends; biology or ecology of the subspecies; effects of current land management on population distribution and abundance; current condition of habitat; and conservation measures that have been implemented to benefit the subspecies specific to the marine and estuarine areas of the Southwestern Washington/Columbia River DPS. Additionally, we request information on threats to the coastal cutthroat trout in the marine and estuarine areas of the Southwestern Washington/Columbia River DPS in relation to the five listing factors (as defined in section 4(a)(1) of the Act).

At the conclusion of our review, we will issue a new determination on the April 5, 1999 proposed rule concerning whether the marine and estuarine areas of the Southwestern Washington/Columbia River DPS of the coastal cutthroat trout constitute a significant portion of the range of the DPS, and if so, whether such significant portion of the range warrants listing. We will base our determination on a review of the best scientific and commercial information available, including all information received as a result of this notice.

References Cited

A complete list of all references we cited in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff of the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 11, 2009

Paul R. Schmidt

Acting Director, Fish and Wildlife Service

[FR Doc. E9–5890 Filed 3–23–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–AX42

Fisheries of the Exclusive Economic Zone Off Alaska; Central Gulf of Alaska Rockfish Program; Amendment 85

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

ACTION: Notification of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) to NMFS for review. If approved, Amendment 85 would modify the GOA FMP and the Central Gulf of Alaska Rockfish Program to remove a restriction that prohibits certain catcher/processors from participating in directed groundfish fisheries in the Bering Sea and Aleutian Islands Management Area in July. This action is necessary to improve flexibility and reduce operating costs for catcher/processors that participate in the Central Gulf of Alaska Rockfish Program. This action is intended to promote the goals and objectives of the Magnuson–Stevens Fishery Conservation and Management Act, the GOA FMP, and other applicable laws.

DATES: Comments on the amendment must be received on or before May 26, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AX42,'' by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- *Mail:* P. O. Box 21668, Juneau, AK 99802.
- *Fax:* 907–586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the categorical exclusion prepared for this action, and the Environmental Assessment (EA), RIR, and Final Regulatory Flexibility Analysis (FRFA) prepared for the Central Gulf of Alaska Rockfish Program are available from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228, or Rachel Baker, 907–586–7425.

SUPPLEMENTARY INFORMATION: The Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson–Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 85 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) is available for public review and comment.

The groundfish fisheries in the exclusive economic zone of Alaska are managed under the GOA FMP and the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson–Stevens Act. Section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108–199) granted NMFS specific authority to manage Central Gulf of Alaska (GOA) rockfish fisheries, and directed the Secretary, in consultation with the Council, to

develop a program that recognizes the historical participation of fishing vessels and fish processors for Central GOA rockfish species. The Central Gulf of Alaska Rockfish Program (Rockfish Program) was recommended by the Council in June 2005 as Amendment 68 to the GOA FMP. Regulations implementing Amendment 68 were published on November 20, 2006 (71 FR 67210), and are located at 50 CFR part 679. Fishing began under the Rockfish Program on May 1, 2007.

Amendment 85 would make minor changes to the GOA FMP to enable catcher/processors that fish in the Central GOA under the Rockfish Program to participate in groundfish fisheries in the BSAI in July.

Under the Rockfish Program, NMFS issued quota share (QS) to persons who held a License Limitation Program (LLP) license that has been associated with a trawl catcher vessel or a trawl catcher/processor vessel that made legal landings of rockfish species and species harvested incidentally in the Central GOA rockfish fisheries during the rockfish fishing seasons from 1996 to 2002. Each year, an eligible rockfish harvester who received a QS allocation at the time the Rockfish Program was implemented may assign all QS associated with the LLP license either to a cooperative formed with other QS holders, or to a limited access fishery in which eligible harvesters compete for a share of the total allowable catch (TAC) for the Central GOA rockfish species. The total amount of QS assigned to all members of a cooperative yields cooperative quota (CQ), an exclusive annual harvest privilege for a portion of the TAC assigned to the Central GOA rockfish species. In addition, a cooperative receives CQ that may be used to harvest certain species caught incidentally in the rockfish fisheries. Eligible harvesters in either the catcher vessel sector or the catcher/processor sector may join cooperatives formed in their respective sectors.

Vessels that fish under the Rockfish Program are subject to a suite of catch and fishery participation limits called sideboards. Sideboard limits are intended to prevent program participants from using the economic benefits and improved flexibility provided by exclusive harvesting privileges to increase effort in other fisheries and adversely affect participants that depend on those fisheries. The Rockfish Program sideboard limits were developed to restrict fishing by eligible Central GOA rockfish harvesters in non–Rockfish Program fisheries during the historical timing of the rockfish fishery, which generally began on July 1 and lasted two to three weeks. Several harvesters that participate in the Rockfish Program also historically participated in other groundfish fisheries in the GOA and BSAI after completing the Central GOA rockfish fisheries. Hence, the sideboard restrictions were limited to the month of July to enable these harvesters, particularly in the catcher/processor sector, to continue participating in these fisheries.

Under current Rockfish Program regulations, all vessels in the catcher/processor sector that are assigned to a Central GOA rockfish cooperative and some vessels that participate in the limited access fishery are prohibited from fishing in BSAI groundfish fisheries, other than pollock and fixed–gear sablefish, for a period beginning July 1. This type of fishery participation sideboard is commonly called a stand down. When the Rockfish Program was implemented, the season opening date for the Central GOA rockfish fishery shifted from July 1 to May 1 for vessels that join a cooperative. In the first year of the Rockfish Program, most cooperative participants in the catcher/processor sector had completed fishing in the Rockfish Program fisheries and other GOA fisheries in June, but were prohibited from participating in BSAI groundfish fisheries in early July by the Rockfish Program stand down. Some catcher/processor vessels remained idle for the two-week stand down period, which was costly to vessel operators because maintenance and crew costs continue to accrue while a vessel is idle.

The Council was prompted to reexamine the BSAI stand downs by participants in the catcher/processor sector of the Rockfish Program, who suggested that some Rockfish Program sideboard limits may be too restrictive. In April 2007, the Council initiated an analysis to examine the impacts of relieving certain catcher/processors that participate in the Rockfish Program from the BSAI stand downs. Based on the analysis and public comment, the Council adopted Amendment 85 to the GOA FMP in October 2008 and submitted it to NMFS for review by the Secretary.

Amendment 85 to the GOA FMP would remove the BSAI stand downs that apply to catcher/processors that participate in the cooperative and limited access fisheries in the Rockfish Program. All other sideboard limits in the Rockfish Program would remain unchanged. The Council determined that the BSAI stand down requirements for vessels participating in the catcher/processor sector were no longer necessary to protect fishery participants in BSAI groundfish fisheries. Since implementation of the Rockfish Program, NMFS implemented Amendments 80 and 85 to the BSAI FMP. Amendment 80 allocated exclusive harvesting privileges for several BSAI directed trawl groundfish fisheries and Amendment 85 refined sector allocations for Pacific cod, which is a directed fishery. These management changes significantly increased the number of BSAI directed groundfish fisheries for which participants can receive exclusive harvesting privileges, and reduced the likelihood that catcher/processors participating in the Rockfish Program could increase effort in BSAI groundfish fisheries to the detriment of other participants, particularly during the short period in early July when the BSAI stand downs are in effect. The Council recommended Amendment 85 to the GOA FMP to improve flexibility and reduce operating costs for catcher/processors that participate in the Rockfish Program.

The RIR/IRFA prepared for this action describes the costs and benefits of the proposed amendment (see **ADDRESSES** for availability). All of the directly regulated entities would be expected to benefit from this action relative to the status quo because the proposed amendment would allow greater flexibility for catcher/processors that participate in the Rockfish Program to coordinate harvesting operations in the GOA and BSAI.

Public comments are being solicited on proposed Amendment 85 to the GOA FMP through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 85, following NMFS' evaluation of the proposed rule under the Magnuson–Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 85 to be considered in the approval/disapproval decision on Amendment 85. All comments received by the end of the comment period on Amendment 85, whether specifically directed to the GOA FMP amendment or the proposed rule, will be considered in the FMP approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 19, 2009.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–6462 Filed 3–23–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 74, No. 55
Tuesday, March 24, 2009

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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 27, 2009, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at The Segal Company, 116 Huntington Avenue, 8th Floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at The Segal Company, 116 Huntington Avenue, 8th Floor, Boston, MA on April 27, 2009, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 3, 2009.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. E9–6365 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Urgent Removal of Timber

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 extension of a currently approved information collection, Urgent Removal of Timber.

DATES: Comments must be received in writing on or before May 26, 2009 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 Director, Forest Management, 1400 Independence Avenue, SW., Mailstop 1103, Washington, DC 20250–1103.

Comments also may be submitted via facsimile to 202–205–1045 or by e-mail to: *urgentremoval@fs.fed.us.*

The public may inspect comments received at the Office of the Director, Forest Management, Third Floor, Southwest Wing, Yates Building, 201 14th Street, SW., Washington, DC during normal business hours. Visitors are encouraged to call ahead to 202–205–1496 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management staff, at 202–205–0858. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Urgent Removal of Timber.

OMB Number: 0596–0167.

Expiration Date of Approval: July 31, 2009.

Type of Request: Extension with no revision.

Abstract: Regulations at 36 CFR 223.53 allow timber sale purchasers to ask for extensions of certain National Forest timber sale contracts when the manufacturing facilities or logging equipment capacity available to purchasers are insufficient to provide for both the rapid harvest of damaged non-National Forest System (NFS) timber in need of expeditious removal and the continued harvest of undamaged (green) timber under contract with the Forest Service. When requesting an urgent removal extension, purchasers are required to provide documentation supporting the need. The collected information is necessary for the contracting officer to make a determination as to whether the purchaser meets the conditions for receiving an urgent removal extension on one or more NFS timber sale contracts.

The intent of this information collection is to assure that provisions of timber sale contracts allowing extensions of time for harvest of NFS timber are consistent with the requirements of the National Forest Management Act (16 U.S.C. 472a), while:

- Minimizing loss of NFS timber adjacent to other timber infested with insects and disease or damaged by fire;
- Reduce the threat to public safety and property resulting from such catastrophic events; and
- Promote the wise use and conservation of natural resources.

The National Forest Management Act requires that extensions of contract time shall not be granted unless ''the purchaser has diligently performed in accordance with an approved plan of operation or that the substantial overriding public interest justifies the extension.'' Regulations at 36 CFR 223.115 mirror the National Forest Management Act.

Regulations at 36 CFR 223.53(b) required the Regional Forester to verify in writing that: (1) A specific catastrophe occurred for which urgent removal extensions should be granted; and (2) Failure to harvest the damaged non-NFS timber promptly could result in the following: (i) Pose a threat to public safety, (ii) Create a threat of an insect or disease epidemic to NFS or other lands or resources, or (iii) Significant private or other public resource loss.

Following such a determination, to obtain an urgent removal extension on a NFS timber sale contract, a purchaser must make a written request to the contracting officer and include the following:

- An explanation of why the harvest of undamaged (green) NFS timber within the term of the existing NFS contract(s) will prevent or otherwise impede the removal of damaged non-NFS timber in need of expeditious removal; and
- Documentation that the manufacturing facilities or logging equipment capacity available to the purchaser would be insufficient to provide for both the rapid salvage of damaged non-NFS timber in need of expeditious removal and continued harvest of undamaged (green) NFS timber under contract with the Forest Service.

The information is submitted by the purchaser in writing to the Forest Service contracting officer, who then verifies the legitimate need for the request of an urgent removal extension(s) in accordance with regulations at 36 CFR 223.53.

No form is designated for the collection of this information. The information is collected in hard copy or by facsimile. Each request for an urgent removal extension is based upon a unique set of circumstances, no two requests are alike. There is no duplication of information and the information is only available from the timber sale purchaser. The Forest Service collects only the minimum amount of information necessary for the contracting officer to make a determination. Without the information, and the frequency at which it is collected, the Forest Service cannot assure that the statutory requirements of the National Forest Management Act are met.

Estimate of Annual Burden: 6 hours.

Type of Respondents: Timber sale contractors (individuals, for-profit businesses, and non-profit entities).

Estimated Annual Number of Respondents: 25.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 150 hours.

Comment Is Invited

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 submission request toward Office of Management and Budget approval.

Dated: March 18, 2009.

Richard W. Sowa,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. E9–6388 Filed 3–23–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogan-Wenatchee National Forest, Washington; Motorized Travel Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Supervisor of the Okanogan-Wenatchee National Forest (OWNF) gives notice of the intent to prepare an Environmental Impact Statement (EIS) on a Proposed Action to implement 36 CFR Parts 212, 251, 261, and 295; Travel Management: Designated Routes and Areas for Motor Vehicle Use; Final Rule (Travel Management Rule) to designate a system of roads, trails, and areas that are open to motor vehicle use. Creating a new motor vehicle travel plan is necessary to improve management and enforcement of off-highway vehicle (OHV) travel policy on the Forest. Existing travel rules that were established in the current Forest Plans did not anticipate the rapid increase in off-highway vehicle use or the types of user conflicts and resource impacts that have occurred in recent years. This notice announces the beginning of scoping, describes the specific elements to be included in a new travel plan, describes the decisions to be made, and estimates the dates for filing the draft and final EIS. This notice also provides information concerning public participation, and the names and addresses of the agency officials who can provide information.

DATES: Comments concerning the scope of the analysis should be received by May 7, 2009 so they can be fully considered. The draft environmental impact statement is scheduled for completion by December 2009. The final EIS is scheduled to be completed by July 2010.

ADDRESSES: Submit written comments to: Travel Management Planning Team, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington, 98801. Electronic comments may be sent to: *OkaWen-Travel-Management@fs.fed.us.*

It is important that reviewers provide their comments at such times and in such a way that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action may be directed to Bob Stoehr, Planning Team Leader at Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington, 98801; or by telephone: (509) 664–9384.

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

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The magnitude and intensity of motor vehicle use have increased to the point where currently unrestricted cross-country motor vehicle use is no longer able to protect resources. Unmanaged off-highway vehicle (OHV) use has resulted in unplanned roads and trails, erosion, watershed and habitat degradation, and impacts to cultural resource sites. Compaction and erosion are the primary effects of OHV use on

soils. Riparian areas and aquatic-dependent species are particularly vulnerable to OHV use. In addition, some national forest visitors report their ability to enjoy quiet recreational experiences is affected by visitors using motor vehicles, resulting in user conflicts. Current regulations prohibit trail construction and operation of vehicles in a manner damaging to the land, vegetation or wildlife. However, these regulations have not proven sufficient to control proliferation of routes or environmental damage.

On November 9, 2005 the Forest Service published final travel management regulations in the **Federal Register** (FR Vol. 70, No. 216, Nov. 9, 2005, pp 68264–68291). This final Travel Management Rule requires designation of roads, trails and areas that are open to motor vehicle use on National Forest System lands. Designations will be made by class of vehicle and, if appropriate, by time of year. Motor vehicle use off designated roads and trails and outside designated areas would then be prohibited by 36 CFR 261.13. The rule was adopted because of a number of resource and social concerns related to motorized travel that were detailed in the rule.

The following needs have been identified for this proposal:

1. There is a need to designate a sustainable system of roads, trails and areas open to motor vehicles (except winter over-the-snow use) that will provide legal public access, enhance regulation of unmanaged motor vehicle travel, protect resources, and decrease motorized conflicts on national forest system lands. This project will not analyze or make any changes to current winter over-the-snow motorized use.

2. There is a need to change the National Forest System of roads and trails to designate motor vehicle route access to dispersed recreation activities and to designate corridors for motorized access to dispersed camping. Some dispersed recreation activities (*e.g.* camping, fishing, horseback riding) depend on motor vehicle access. Those activities are often accessed by short spurs that have been created by the passage of motor vehicles. Many such unauthorized ''user-created'' routes are not part of the national forest transportation system. If these access routes are not added to the transportation system and designated on the motor vehicle use map, or if corridors for motorized accesss to dispersed camping are not designated, regulatory changes noted above would prohibit use of these routes and preclude motor vehicle access to many dispersed recreation activities.

3. There is a need to provide diverse motor vehicle recreation opportunities, such as for 4x4 vehicles, motorcycles, ATVs and passenger cars. There is also a need to provide opportunities for OHVs operated by both licensed and unlicensed drivers. Part of this diversity includes designating a system of reasonably safe ''motorized mixed use'' national forest roads that recognizes Washington state law that allows for non-highway legal OHVs and unlicensed operators. Currently, there is a small number of specific roads authorized ofr motorized mixed use. State law provides for the operation of OHVs on non-highway roads on the national forest if the Forest Service authorizes such use. This ''motorized mixed use'' allows concurrent use of a road by highway legal and non-highway legal vehicles.

4. Current language in the Okanogan National Forest Land and Resource Management Plan (1989) and the Wenatchee National Forest Land and Resource Management Plan (1990) (Forest Plans) needs to be amended by deleting forest plan standards and gudelines that are not consistent with the Travel Management Rule.

It will be a benefit for the Forest Service and public to have greater certainty about which roads and trails are part of the managed system of motorized and non-motorized routes. Greater certainty will be provided by improved ability to prioritize and budget for road and trail maintenance and to evaluate public safety hazards; improved ability to focus on how and where to sustain and improve motorized and non-motorized recreation opportunities on the Okanogan-Wenatchee National Forest; improved ability to coordinate public access across different land ownerships; improved public understanding and adherence to travel rules, thus reducing the development of user-created routes; and improved ability to reduce mortorized route and use impacts to other resources values and Forest users.

Proposed Action

Based on the purpose and need for action and as a result of the recent travel analysis process which the Okanogan-Wenatchee National Forest began in 2006, the OWNF proposes the following changes to motor vehicle use on specific roads, trails and areas within the non-wilderness portion of the Forest. The proposed action will:

1. Designate a system of roads, trails and areas open for motor vehicle use by vehicle class and season of use.

2. Designate corridors and motorized routes for access to dispersed recreation.

3. Designate roads for motorized mixed use.

4. Amend the Okanogan Forest Plan and the Wenatchee Forest Plan to designate roads, trails and areas open to motor vehicle use and prohibit motorized travel off designated routes.

This proposed action is a starting point for discussions concerning travel management on the OWNF, and alternatives to the proposed action will be developed based on concerns raised by the public during scoping. Details of the proposed action follow.

1. The designation of 22.4 miles of new or currently unauthorized motorized trails to the National Forest System (NFS) of motorized trails and two areas open to motorized cross-country travel.

2. The designation of motorized use by OHVs only on 115 miles of NFS roads that are currently managed as closed to highway legal vehicles.

3. The designation of 498.2 miles of NFS roads for motorized mixed use.

4. The designation of 1,674 access routes on the NFS of roads and trails to allow motorized vehicle access to dispersed recreation.

5. The designation of 698 miles of corridors (300 feet on each side of the road centerline) along NFS roads to allow motorized access to dispersed camping.

6. Once a system of roads, trails, and areas is designated as open to motor vehicles, then motor vehicle use off the system would be prohibited by regulation (36 CFR 261.13).

The proposed action does not analyze, restrict, nor make any changes to the management of motorized winter over snow recreation. The following uses are exempted by the Travel Management Rule and from the proposed motor vehicle use designations:

1. Aircraft;

2. Watercraft;

3. Over-snow vehicles;

4. Limited administrative use by the Forest Service;

5. Use of any fire, military, emergency, or law enforcement vehicle for emergency purposes;

6. Authorized use of any combat or combat support vehicle for national defense purposes;

7. Law enforcement response to violations of law, including pursuit; and

8. Motor vehicle use that is specifically authorized under a written authorization under Federal law or regulations.

When a decision on the travel management proposal is made, the OWNF will produce a motor vehicle use map (MVUM) depicting roads, trails, and areas that are open to public

motorized travel. The MVUM would be the primary tool used to determine compliance and enforcement with motor vehicle use designations on the ground. Currently, motorized travel on the OWNF is permitted unless designated closed. Following the decision and publication of the MVUM, motorized travel on the OWNF would be closed unless designated open.

Additional details and a full description of the proposed action can be found on the Internet at *http://www.fs.fed.us/r6/okawen/travel-management.* In addition, maps and details will be available for viewing at Forest Service offices in Republic, Tonasket, Okanogan, Winthrop, Chelan, Entiat, Wenatchee, Leavenworth, Cle Elum, Naches, and North Bend, Washington. Maps will also be available for viewing at public libraries in Tonasket, Omak, Okanogan, Twisp, Winthrop, Chelan, Entiat, Wenatchee, Cashmere, Leavenworth, Cle Elum, Ellensburg, Naches, Tieton, Selah and Yakima, Washington.

Possible Alternatives

A full range of alternatives will be considered, including the proposed action, no action, and additional alternatives that respond to issues generated during the scoping process. The no action alternative would maintain current allowances and restrictions for OHV use and motorized cross-country travel described in the current Okanogan and Wenatchee National Forest Plans and Okanogan National Forest Travel Plan. All alternatives would comply with the Okanogan and Wenatchee National Forest Plans.

Lead Agency

The Forest Service will be the lead agency in accordance with 40 CFR 1501.5(b), and is responsible for preparation of the environmental impact statement (EIS).

Responsible Official

The Forest Supervisor for the Okanogan-Wenatchee National Forest, Rebecca Lockett Heath, will be the responsible official for this EIS and its Record of Decision. As the Responsible Official, the Forest Supervisor will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Nature of the Decision To Be Made

The Responsible Official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to:

1. Designate where and under what conditions motor vehicles can be used on specific roads, trails and areas.
2. Designate where and under what conditions motorized access for dispersed recreation would be allowed.
3. Designate where and under what conditions motorized mixed use would be allowed on NFS roads.
4. Determine whether or under what conditions to amend the Forest Plans.

Preliminary Issues

Preliminary issues identified during the earlier public involvement process include the following:

1. Motorized use on specific roads and trails may affect: Wildlife (in particular grizzly bear and other focal species potentially affected by travel corridor disturbance), soil erosion (compaction and sedimentation), fish and aquatics species (sedimentation), and riparian habitat;
2. Motorized use on specific roads or trails may cause social conflicts between different recreational user groups;
3. Mixed motorized use on National Forest System roads may affect the safety of all users;
4. Motorized use on specific roads and trails may affect the resources and noise level on adjacent private land.

Scoping Process

This notice of intent (NOI) initiates the scoping process, which guides development of the environmental impact statement.

The OWNF held 13 public meetings in central Washington and in the Seattle, Washington area in 2006 and 2007 to help develop the proposed action. These meetings were used to identify potential issues and potential components of the proposed action.

The Forest Supervisor is seeking public and agency comment on the proposed action to identify issues that arise from the proposed action. These issues may lead to other alternatives, or additional mitigation measures and monitoring requirements.

Comments are most valuable if they are site-specific. Comments about existing or proposed conditions on individual routes, desired motorized or non-motorized recreation opportunities, uses and impacts, and route designations are being sought.

Public meetings to explain and gather comments about the proposed action will be held at the following locations and dates from 5 p.m. until 8:30 p.m.:

Ellensburg, WA, April 6, Hal Holmes Community Center.

Yakima, WA, April 7, Howard Johnson Ballroom.

Cashmere, WA, April 8, Apple Annie Antique Gallery.

Okanogan, WA, April 9, Okanogan County Agriplex.

Seattle, WA area: To be announced and posted on the Travel Management Web site (*http://www.fs.fed.us/r6/okawen/travel-management*).

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in December 2009. The final EIS is expected to be completed by July 2010.

To assist the Forest Service in identifying and considering issues and concerns about the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: March 18, 2009.

Rebecca Lockett Heath,

Forest Supervisor.

[FR Doc. E9–6385 Filed 3–23–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Availability (NOA) Record of Decision (ROD) for the Designation of Energy Corridors on Federal Land in the 11 Western States, Including Proposed Amendments to Selected Land Management Plans

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) and the National Forest Management Act (NFMA, 16 U.S.C. 1600–1614 *et seq.*), the Forest Service announces the

decision to amend selected Land Management Plans. Specifically, the ROD amends 38 Land Management Plans for National Forests in 10 of the 11 Western States. The United States Department of the Interior and the Bureau of Land Management (BLM) are expected to concurrently announce a similar decision amending their respective Resource Management Plans.

Section 368 of the Energy Policy Act of 2005 (EPAct 2005), Public Law 109–58, directs the Secretaries of Agriculture, Defense, Energy, and the Interior to designate corridors on Federal land in the 11 Western States for oil, gas, and hydrogen pipelines, as well as electricity transmission and distribution facilities, and incorporate the designated corridors into relevant agency land use and resource management plans or equivalent plans.

The 11 Western States are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The Forest Service is not designating any corridors in the State of New Mexico.

DATES: *Effective Date:* This decision is effective April 23, 2009.

ADDRESSES: The ROD is available on the internet at *http://www.corridoreis.anl.com.* Printed copies will be available at one of the involved National Forest supervisor or district ranger offices in the 10 Western States.

FOR FURTHER INFORMATION CONTACT: Glen Parker, Realty Specialist, Lands, 202–205–1196 or Ron Pugh, Planning Specialist, Ecosystem Management Coordination, 202–205–0992. USDA Forest Service, L; (Glen Parker); 1400 Independence Ave., SW, Mailstop Code: 1124; Washington, DC 20050–1124.

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

SUPPLEMENTARY INFORMATION: In October 2008, the BLM released a final Programmatic Environmental Impact Statement (PEIS) to designate corridors for future oil, gas, and hydrogen pipelines, as well as electricity transmission and distribution facilities, and to incorporate the designated corridors into the relevant agencies' land use and resource management plans or equivalent plans. Section 368 directs the involved agencies to take into account the need for upgraded and new infrastructure and to take actions to improve reliability, relieve congestion, and enhance the capability of the national grid to deliver energy. This action only pertains to the designation of corridors for potential facilities on Federal lands located within the 11 Western States.

Designation of Section 368 energy corridors is an important step in addressing critical energy needs in the West. Energy corridors on Federal lands provide pathways for future long-distance energy transmission that will help to relieve congestion, improve reliability, and enhance the national electric grid. Future use of corridors should reduce the proliferation of rights-of-way (ROWs) across the landscape and minimize the environmental footprint of future development.

Section 368 energy corridors are located to avoid, to the maximum extent possible, significant, known environmental resources. The corridors are designated considering potential renewable energy development in the West, which is currently constrained in part by a lack of transmission capacity. The coordinated, interagency permitting and environmental compliance processes, evaluated in the PEIS and adopted by this ROD, will foster long-term, systematic planning for energy transportation development and offer a consistent and improved interagency permitting process. The amendment of the land management plans is responsive to USDA's responsibilities under Section 368 of the Act and represents a forward-looking proactive response to the Nation's energy needs and the sustainable management of NFS lands.

The ROD is intended to improve coordination among the agencies to increase the efficiency of using designated corridors. In many areas of the United States, including the West, the infrastructure required to deliver energy has not always kept pace with growth in energy demand. The agencies hope to improve the delivery of energy, while enhancing the electric transmission grid for the future, by establishing a coordinated network of Section 368 energy corridors on Federal lands in the West. The final PEIS analyzes the environmental impacts of designating Section 368 energy corridors in 11 Western States and incorporating those designations into relevant agency land use and resource management plans or equivalent plans.

The Agencies prepared this PEIS at the designation stage because they believe it is an appropriate time to examine environmental concerns at the programmatic level. Impacts that affect the quality of the environment will only occur after specific proposals are submitted, analyzed through the NEPA process, and approved by the land management agency. The agencies expect that the PEIS will assist subsequent site-specific analyses for individual project proposals.

These energy corridors comprise a comprehensive, coordinated network of preferred locations for future energy projects that could be developed to satisfy demand for energy. This ROD designates approximately 990 miles of energy corridors on National Forest System lands in 10 of the 11 Western States as the preferred location for oil, natural gas, and hydrogen pipelines as well as electricity transmission and distribution lines. Environmental, engineering, and land use screening criteria were applied during the development of the proposed action to reduce potential environmental and land use conflicts. The energy corridors will typically be 3,500 feet wide, although the width may vary in certain areas due to environmental, topographic, or management requirements.

The policies and Interagency Operating Procedures (IOPs) developed under the proposed action establish requirements for the management of future individual energy transportation projects. The IOPs identify required management procedures to be incorporated into the analysis of future project-specific energy transportation development proposals.

The ROD amends a total of 38 Forest Service land management plans in 10 of the 11 Western States. The land use plan amendments designate the Section 368 energy corridors identified in the final ROD. The plan amendments do not eliminate the need for site-specific NEPA analyses of individual development proposals.

Readers should note this decision was signed by the Under Secretary of Agriculture for Natural Resources and the Environment; therefore, no administrative review of the Record of Decision under 36 CFR part 217 is available.

Reference to previously published **Federal Register** documents: 73 FR 72521, November 28, 2008; 73 FR 2905, January 16, 2008; 72 FR 64591, November 16, 2007; and 70 FR 56647, September 28, 2005.

Dated: March 12, 2009.

Ann Bartuska,

Acting Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. E9–6346 Filed 3–23–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on April 6, 2009, 1:45 p.m., Room 4830, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda

Open Session

1. Licensing History for Deemed Exports.
2. Discussion of Methodology Models/Next Steps.
3. Public Comments.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than March 30, 2009.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 16, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: March 17, 2009.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. E9–6345 Filed 3–23–09; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–890

Notice of Correction to the Final Results of Changed Circumstances Review and Determination to Revoke Order in Part: Wooden Bedroom Furniture from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Correction to final results of changed circumstances review and determination to revoke order in part.

EFFECTIVE DATE: February 25, 2009.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–4474 and (202) 482–3434, respectively.

BACKGROUND:

On February 25, 2009, the Department of Commerce (the Department) published in the **Federal Register** the final results of changed circumstances review and determination to revoke order in part of wooden bedroom furniture from the People's Republic of China (PRC). See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part, 74 FR 8506 (February 25, 2009) (''Final CCR''). The Department has discovered that the dimensions are incorrectly listed for item (2) of the exclusion as identified in the ''Scope of Changed Circumstances Review'' of the Final CCR.

We are correcting the Final CCR to identify the appropriate dimensions to item (2) of the scope as follows: (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width. The remaining scope descriptions in the Final CCR are correct.

This correction to the Final CCR is issued and published in accordance with sections 751(b), (d) and 782(h) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e) and 351.222(g).

Dated: March 13, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–6338 Filed 3–23–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp from Thailand: Initiation of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 24, 2009.

SUMMARY: In February 2009, the Department of Commerce (the Department) received from several producers/exporters of frozen warmwater shrimp from Thailand a request to initiate a changed circumstances review to consider partially revoking the order with respect to two companies, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b) and 351.222. In response to this request, the Department is initiating a changed circumstances review.

FOR FURTHER INFORMATION CONTACT: Henry Almond, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0049.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Thailand. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From Thailand*, 70 FR 5145 (Feb. 1, 2005) (*Thai Shrimp Order*).

On January 30, 2009, the Department implemented its determination regarding the offsetting of dumped sales with non-dumped sales in the

antidumping duty investigation of certain frozen warmwater shrimp from Thailand, challenged by Thailand before the World Trade Organization. *See Implementation of the Findings of the WTO Panel in United States—Antidumping Measure on Shrimp From Thailand: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp From Thailand*, 74 FR 5638 (Jan. 30, 2009) (*Section 129 Implementation*). As a result, the Department revoked the following nine companies, collectively known as the ''Rubicon Group,'' from the *Thai Shrimp Order:* Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Intersia Foods Co., Ltd., Phatthana Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., and Wales & Co. Universe Limited. *See Section 129 Implementation*, 74 FR at 5639.

On February 5, 2009, the Rubicon Group requested that the Department conduct an expedited changed circumstances review under 19 CFR 351.221(c)(3)(iii) to consider also revoking from the *Thai Shrimp Order* two additional companies (Phatthana Frozen Food Co., Ltd. (PFF) and Sea Wealth Frozen Food Co., Ltd. (Sea Wealth)), both of which became operational after the less-than-fair-value (LTFV) investigation. According to the Rubicon Group, although these two companies were not included in the Department's margin calculations in the LTFV investigation, the Department has treated them as part of the Rubicon Group in subsequent segments of this proceeding. In this request, the Rubicon Group additionally contended that any revocation for PFF and Sea Wealth should be effective January 16, 2009, the effective date of the *Section 129 Implementation.*

On February 12, 2009, we requested that the Rubicon Group clarify its request to identify the relevant statutory provision under which its request fell. On February 13, 2009, the Rubicon Group clarified its changed circumstances review request stating that it would be appropriate for the Department to evaluate its request using either a ''collapsing'' analysis under 19 CFR 351.401(a) or the Department's ''successor-in-interest'' analysis.

On February 18, 2009, we requested further information from the Rubicon Group with respect to the following four factors: Management; production facilities; supplier relationships; and customer base. On March 13, 2009, the Rubicon Group submitted the requested information.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[1] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size. The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. In accordance with 19 CFR 351.216(d), the Department finds there is sufficient information to warrant initiating a changed circumstances review. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a changed circumstances review to determine whether PFF and Sea Wealth should be revoked from the

Thai Shrimp Order

Although the Rubicon Group has submitted documentation regarding the corporate structure of the Rubicon Group and its constituent companies, we require additional time to analyze these submissions. Accordingly, it would be inappropriate for the

[1] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

Department to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). As a result, the Department is not issuing preliminary results for this changed circumstances review at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is in accordance with section 751(b)(1) of the Act.

Dated: March 18, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–6438 Filed 3–23–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On March 11, 2009, ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc. (collectively ''Mexinox''), filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel Review was requested of the Final Results of the 2006–2007 Antidumping Duty Administrative Review, made by the International Trade Administration, respecting Stainless Steel Sheet and Strip in Coils from Mexico. This determination was published in the **Federal Register** (74 FR 6365), on February 9, 2009. The NAFTA Secretariat has assigned Case Number USA–MEX–2009–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: Valerie Dees, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') established a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada, and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on March 11, 2009, requesting a panel review of the determination and order described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is April 10, 2009);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is April 27, 2009); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in panel review and the procedural and substantive defenses raised in the panel review.

Dated: March 19, 2009.

Valerie Dees,

United States Secretary, NAFTA Secretariat.

[FR Doc. E9–6454 Filed 3–23–09; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke one antidumping duty and one countervailing duty order in part.

DATES: Effective Date: March 24, 2009.

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.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2004), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. With respect to the antidumping duty orders on Frozen Warmwater Shrimp from Brazil, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam, the initiation of the antidumping duty administrative review for these cases will be published in a separate initiation notice. The Department also received timely requests to revoke in part the antidumping duty order on Stainless Steel Bars from India with respect to one exporter and the countervailing duty order on Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea with respect to one exporter.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where

there are no exports, sales, or entries of subject merchandise during the respective period of review (POR) listed below. If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the POR, it should notify the Department within 30 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name [2], should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Initiation of Reviews:

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 28, 2010.

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.*, an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Antidumping Duty Proceedings	
BRAZIL:	
Stainless Steel Bar, A–351–825	2/1/08–1/31/09
Villares Metals S.A.	
Frozen Warmwater Shrimp[3], A–351–838	2/1/08–1/31/09
FRANCE:	
Low Enriched Uranium[4], A–427–818	2/1/08–1/31/09 2/1/07–1/31/08 2/1/05–1/31/06
Eurodif S.A./AREVA NC (formerly known as Cogema)	
INDIA:	
Stainless Steel Bar, A–533–810	2/1/08–1/31/09
Ambica Steels Limited	
Venus Wire Industries Pvt. Ltd.	
Frozen Warmwater Shrimp[5], A–533–840	2/1/08–1/31/09
ITALY:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–475–826	2/1/08–1/31/09
Evraz Palini e Bertoli S.p.A.	
JAPAN:	
Carbon Steel Butt-Weld Pipe Fittings, A–588–602	2/1/08–1/31/09
Benex Corporation	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–588–847	2/1/08–1/31/09
Kawasaki Steel Corporation (and its alleged successor-in-interest JFE Steel Corporation)	
REPUBLIC OF KOREA:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/08–1/31/09
Daewoo International Corporation	
Dongkuk Steel Mill Co., Ltd.	
Hyosung Corporation	
Hyundai Mipo Dockyard Co., Ltd.	
JeongWoo Industrial Machine Co., Ltd.	
THAILAND: Frozen Warmwater Shrimp[6], A–549–822	2/1/08–1/31/09
THE PEOPLE'S REPUBLIC OF CHINA:	
Axes/Adzes[7], A–570–803	2/1/08–1/31/09
Greenguard Industry Co., Ltd.	
Frozen Warmwater Shrimp[8], A–570–893	2/1/08–1/31/09
SOCIALIST REPUBLIC OF VIETNAM: Frozen Warmwater Shrimp[9], A–552–802	2/1/08–1/31/09
Countervailing Duty Proceedings	
REPUBLIC OF KOREA:	
Certain Cut-to-Length Carbon-Quality Steel Plate, C–580–837	1/1/08–12/31/08
Dongkuk Steel Mill Co., Ltd.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia S.p.A.* v. *United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.*, the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

These initiations and this notice are in accordance with section 751(a) of the Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

[3] The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

[4] The Department had previously deferred the initiation of the reviews for the 05/06 and 07/08 periods. *See* 71 FR 17077 (April 5, 2006) and 73 FR 16837 (March 31, 2008).

[5] The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

[6] The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

[7] If the above-named company does not qualify for a separate rate, all other exporters of Heavy Forged Hand Tools from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

[9] The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

Dated: March 17, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations,

[FR Doc. E9–6347 Filed 3–23–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In–Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 24, 2009.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–3338.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in–quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period October 1, 2008 through December 31, 2008.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in–quota rate of duty.

The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in–quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: March 16, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

APPENDIX

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN–QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
27 European Union Member States[3]	European Union Restitution Payments	$ 0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	$ 0.29	$ 0.29
Norway	Indirect (Milk) Subsidy	$ 0.00	$ 0.00
	Consumer Subsidy	*$ 0.00*	*$ 0.00*
	Total	$ 0.00	$ 0.00
Switzerland	Deficiency Payments	$ 0.00	$ 0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the United Kingdom.

[FR Doc. E9–6340 Filed 3–23–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO01

Magnuson–Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notification of a proposal to conduct exempted fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application that was submitted by the Gulf of Maine Research Institute (GMRI) warrants further consideration and should be issued for public comment. The EFP would exempt participating vessels from the seasonal Atlantic herring (herring) Management Area 1A and Management Area 1B quota closures, seasonal Management Area 1A gear restrictions, and herring trip possession limits. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Herring Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made.

DATES: Comments must be received on or before April 8, 2009.

ADDRESSES: Comments may be submitted by e–mail to *herring.efp@noaa.gov*. Include in the subject line of the e–mail comment the following document identifier: ''Comments on GMRI herring EFP.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the

outside of the envelope, ''Comments on GMRI herring EFP.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Cheryl McGarrity, Fishery Management Specialist, phone: 978–281–9174, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION: The Science and Research Director for NMFS's Northeast Fisheries Science Center selected the proposal submitted by GMRI under the 2008–2009 Atlantic Herring Research Set–Aside (RSA) Program entitled: ''Effects of Fishing on Herring Aggregations,'' which would assess the effects of midwater trawling on herring aggregations. An EFP was issued to conduct this work in 2008, and this EFP would authorize exemptions for Year 2 of this research. The proposed research would examine the ability to evaluate potential impacts of midwater trawling on Atlantic herring aggregations through the use of hydroacoustics. Due to concern that other fishing vessels, particularly other herring midwater trawl vessels, fishing in the study area could interfere with the survey, GMRI submitted an EFP application to conduct its research during the midwater gear restriction period, thereby ensuring other midwater trawl vessels will not be fishing in the study area.

GMRI requests that a pair of trawl vessels perform midwater trawling for up to four sampling trips (each of 5-days duration) using standard midwater trawl gear in Areas 1A and 1B between June 1 and September 30, 2008, to evaluate the behavioral response of isolated herring schools to midwater trawls. During a sampling trip, the research team would sequentially perform a series of acoustic surveys, conduct midwater pair trawling, then perform another series of acoustic surveys; which would take less than 72 hr. Vessels would conduct five or fewer tows per day, with each tow lasting 2 to 4 hr. All trawling operations would be monitored by GMRI staff. All herring caught during the survey would be deducted from GMRI's Area 1A and 1B herring RSA allocations of 2,976,240 lb (1,350 mt) and 661,380 lb (300 mt), respectively. Vessels conducting the survey would not be allowed to exceed their Area 1A or Area 1B RSA allocations.

The subject EFP would exempt vessels fishing for herring in Management Area 1A and Management Area 1B from quota closures and herring trip possession limits, as specified at 50 CFR 648.201 and 648.204, respectively. It would also exempt vessels from the seasonal Management Area 1A trawl gear restriction period (restriction period), as defined at § 648.202(a). Fish caught during research trips would be landed under the set–aside quota awarded to GMRI. Herring caught as part of this research would be deducted from the RSA quota, not from the commercial quota.

Regulations under the Magnuson–Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs. The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 19, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–6409 Filed 3–23–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO02

Mid-Atlantic Fishery Management Council; Atlantic Mackerel, Butterfish, Atlantic Bluefish, Spiny Dogfish, Summer Flounder, Scup, Black Sea Bass, Tilefish, Surfclam, and Ocean Quahog Annual Catch Limits and Accountability Measures Omnibus Amendment; Scoping Process

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); notice of public scoping meetings; requests for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) announces its intention to prepare, in cooperation with NMFS, an EIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures to address the new Magnuson-Stevens Fishery Conservation and Management Act requirements for annual catch limits (ACLs) and accountability measures (AMs) in an Omnibus Amendment to the fishery management plans (FMPs) for Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, tilefish, surfclams, and ocean quahogs. *Loligo* and *Illex* squid are exempt from these new requirements because they have annual life cycles and not subject to overfishing.

This notice announces a public process for determining the scope of issues to be addressed, and for identifying the significant issues related to the implementation of ACLs and AMs for these fisheries. This notice is to alert the interested public of the scoping process, the development of the Draft EIS, and to provide for public participation in that process.

DATES: Written comments must be received on or before 5 p.m., EST, on May 15, 2009. Three public scoping meetings will be held during this comment period. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

ADDRESSES: Written comments may be sent by any of the following methods:

- E-mail to the following address: *Omnibus.NOI@noaa.gov*;
- Mail or hand deliver to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904–6790. Mark the outside of the envelope ''Omnibus Amendment: National Standard 1 Requirements Scoping Comments''; or
- Fax to (302) 674–5399.

The scoping document may also be obtained from the Council office at the previously provided address, or by request to the Council by telephone (302) 674–2331, or via the Internet at *http://www.mafmc.org/mid-atlantic/comments/comments.htm*.

Comments may also be provided verbally at any of the three public scoping meetings. See Supplementary Information for dates, times, and locations.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New St., Dover, DE 19904–6790, (telephone 302–674–2331).

SUPPLEMENTARY INFORMATION: The management units for Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, tilefish, surfclams, and ocean quahogs vary, but span the range from the eastern coast of Florida in the

western Atlantic Ocean northward to the U.S.-Canadian border. The specific management units for each species, are contained in the Atlantic Mackerel, Squid, and Butterfish; Atlantic Bluefish; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; Tilefish, and Surfclam and Ocean Quahog FMPs.

Meetings

Three scoping meetings to facilitate public comment will be held on the following dates and locations:

1. April 14, 2009, 7:00 p.m., The Sanderling Resort and Spa, 1461 Duck Rd., Duck, NC 27949;

2. April 21, 2009, 7:00 p.m., NYSDEC Marine Resources, 205 N. Belle Mead Rd, Ste 1 East Setauket, NY 11733.

3. May 4, 2009, 7:00 p.m., Crowne Plaza Old Town Alexandria, 901 N. Fairfax Street, Alexandria, Virginia 22314;

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Bryan (302–674–2331 ext 18) at least 5 days prior to the meeting date.

Issues Identified for Discussion Under this Amendment

Various Methods for Calculating Acceptable Biological Catch (ABC)

In an effort to be compliant with the Magnuson-Stevens Act, National Standard 1(NS 1), and Guidelines (50 CFR 600.310), the Council will seek to develop formulaic approaches, known as control rules, that can be consistently applied to derive ABC relative to the status of the stock and the level of scientific uncertainty surrounding the stock status estimate. The following are examples of ABC control rules that the Council may further develop for use in managing the aforementioned species. However, the Council may deviate from these examples and develop additional ABC control rule approaches, consistent with their description in the NS 1 Guidance. The Council will rely heavily on its Scientific and Statistical Committee (SSC) during development and implementation of ABC control rules and it will be the SSC that is responsible for application of the final control rules to recommend either annual or multi-year ABCs for target species stocks.

For example, ABC for all of the target stocks could be prescribed through a set of tiers designed to classify each stock based on the amount or level of information available, type of stock assessment conducted, current stock status, and/or other relevant factors. Within each tier, a pre-defined set of control rules would be used to calculate the overfishing level (OFL) and ABC. In addition to an overarching tiered approach, species-specific approaches to developing control rules could be applied to one, some, or all of the stocks in the fisheries. For example, a probability-based ABC control rule could be applied where ABC is reduced from OFL based on a higher likelihood of achieving the target fishing mortality rate of F_{MSY}, or $F_{REBUILD}$ if the stock is under a rebuilding plan. An ABC control rule based on a fixed percentage could also be applied. For example, ABC could be set at 75 percent of the OFL (ABC = 0.75 OFL) or some other fixed percentage value. An approach based on maintaining some specified level of maximum spawning potential (MSP) of a stock could also be applied.

Various Methods for Establishing ACLs

The Council will seek to develop control rules that can be consistently applied to derive ACLs relative to the status of the stock and the level of management uncertainty or implementation error surrounding the stock status estimate. The following are examples of ACL control rules that the Council may further develop for use in managing the aforementioned stocks in the fisheries. ACLs may be established at the fishery level, sector level, or sub sector level. The Council may deviate from these examples and develop other ACL control rule approaches, consistent with the NS 1 Guidelines. Approaches to developing ACL control rules could be applied to one, some, or all the stocks in the fisheries. For example, a probability-based ACL control rule could be applied where ACL is reduced from ABC based on a higher likelihood of achieving the target fishing mortality rate of F_{MSY}, or $F_{REBUILD}$ if the stock is under a rebuilding plan. An ACL control rule based on a fixed percentage could also be applied. For example, ACL could be set at 75 percent of the ABC (ACL = 0.75 ABC) or some other fixed percentage value. An approach based on maintaining some level of MSP of a stock could also be applied.

Various Approaches to Establishing AMs

The Council will develop AMs that are designed to prevent ACLs from being exceeded, in the case of proactive AMs, and AMs that are triggered when an ACL is exceeded, in the case of reactive AMs. The Council may also consider development of annual catch target (ACT) control rules, which are proactive AMs, to establish catch targets that further insure that the ACL has a low likelihood of being exceeded and, thus, that reactive AMs will be triggered. The following are examples of the type of measures that may be considered by the Council. The Council has considerable latitude in developing the specific measures that will be considered in the Omnibus Amendment.

For one, some, or all of the stocks in the fisheries with recreational measures under Council management jurisdiction (i.e. summer flounder, scup, black sea bass, Atlantic bluefish, tilefish, and Atlantic mackerel) the Council will consider reactive AMs that would be triggered if the ACL is exceeded or proactive AMs which are designed to prevent exceeding the ACL, or both. The recreational catch limit is the sum of the recreational catch limit and recreational discards. Reactive AMs could include the deduction of all or some of the prior year overage to reduce the subsequent year's recreational catch limit. Proactive AMs for the recreational fishery could include the setting of an ACT that is less than the ACL and designed to buffer against exceeding the ACL. This may be useful in the recreational fishery, where timely inseason management is typically not possible. Percentage-based or probability-based approaches similar to those described above for ABC and ACL could be utilized as a mechanism to set ACTs. Methods that directly account for the frequency ACLs could be exceeded (performance-based), will also be considered, to ensure that ACLs are only rarely exceeded. Inseason fishery closures could also be considered. While most recreational data are insufficient to informatively predict when a closure may be appropriate, the current regulations for most recreational fisheries under the Council's jurisdiction do not provide the ability to close the season during the fishing year, even if an overage has occurred or is projected to occur if the fishery remains open. While it is not expected that projections would be utilized to close recreational fisheries inseason, being able to reduce the magnitude of an overage may be a tool considered by the Council.

For one, some, or all of the stocks in the fisheries with commercial measures under Council management jurisdiction, the Council will consider reactive AMs which that would be triggered if the ACL is exceeded, or proactive AMs that are designed to prevent exceeding the ACLs. While some stocks have these measures in their FMPs, others do not. The commercial catch limit is the sum of the commercial quota and commercial discards. Reactive AMs for

the commercial fishery could include deducting all or some of the prior year commercial overage (in weight) from the subsequent year's commercial catch limit.

Proactive AMs for the commercial fishery could include adjustable trip limits, as a method to prevent ACLs from being exceeded. When a given percent of the commercial catch limit (in weight) is reached, trips limits in the fishery for that species could be decreased until the total commercial catch limit is reached. The fixed percentage at which trip limits would drop would vary depending on which species the limit applies to, and the trip limits themselves would be species-specific. Other proactive AMs could include inseason closures when quotas are projected to be attained. Many Council-managed species already have in place such measures; however, the Council may consider additional approaches or modification of existing reporting requirements in support of improving inseason fishery management.

Other Considerations

The Council could consider establishing a periodic formal review by the SSC, which would provide the opportunity to revise ABC control rules every few years after a control rule has been implemented. For example, a 5-year time period could be used. The Council may also identify a broader approach to inclusion of species in its FMPs that may or may not require conservation or management, but that may be relevant in trying to further ecosystem management in the fishery. While not required, the Council could identify and include non-target stocks and/or ecosystem components in its FMPs. The Council may also consider ecosystem issues in the development of the catch limit framework for any of the stocks in the fisheries. Any allocation issues relating to the development of ABC, ACL, or AMs could also be considered by the Council.

The Council may deviate from these examples and develop additional approaches, consistent with their description in the Magnuson-Stevens Act, NS1, and the NS 1 Guidelines. The above issues under consideration are described in greater detail in the scoping document itself; copies may be obtained from the Council (see **ADDRESSES**) or via the Internet at *http://www.mafmc.org.mid-atlantic/comments/comments.htm*.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 19, 2009

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–6468 Filed 3–23–09; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Chicago Mercantile Exchange to Clear Certain Over-the-Counter Agricultural Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Contracts and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: By petition dated April 21, 2008 (Petition), the Chicago Mercantile Exchange Inc. (CME), a registered derivatives clearing organization (DCO), and the Board of Trade of the City of Chicago, Inc. (CBOT), a designated contract market, requested permission to clear certain over-the counter (OTC) swap agreements (swaps) in corn, wheat, and soybeans. Authority for granting this request is found in Section 4(c) of the Commodity Exchange Act (Act).[1] The Petition also requested permission pursuant to Section 4d of the Act[2] to allow CME and futures commission merchants (FCMs) clearing through CME to commingle positions in those cleared-only OTC swaps (cleared-only contracts) and funds associated with those positions with positions and funds otherwise required to be held in a customer segregated account. The Commodity Futures Trading Commission (Commission) has reviewed public comments and the entire record in this matter and it has determined to issue an order granting the requested permission, subject to certain terms and conditions.

DATES: *Effective Date:* March 18, 2009.

FOR FURTHER INFORMATION CONTACT: Phyllis P. Dietz, Associate Director, 202–418–5449, *pdietz@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

[1] 7 U.S.C. 6(c).

[2] 7 U.S.C. 6d.

SUPPLEMENTARY INFORMATION:

I. The CME/CBOT Petition

CME, the DCO that provides clearing services for CBOT, and CBOT jointly submitted a Petition requesting that the Commission issue an exemptive order under Section 4(c) of the Act.[3] The order would grant CME approval to clear OTC corn basis swaps and corn, wheat, and soybean calendar swaps, and it would permit CBOT to list those products for ''clearing-only.''[4] The contract size for the basis and calendar swaps would be the same as that for corn, wheat, and soybean futures—5,000 bushels. Each of the proposed cleared-only contracts would be cash settled, in contrast to the corresponding futures contracts which are physically settled.

Part 35 of the Commission's regulations[5] exempts, subject to conditions, swap agreements and eligible persons entering into such agreements from most provisions of the Act.[6] The term ''swap agreement'' is defined to include, among other types of agreements, a ''basis swap'' and a ''commodity swap.''[7] Part 35 was promulgated pursuant to authority conferred upon the Commission in Section 4(c) of the Act to exempt certain transactions in order to explicitly permit certain off-exchange derivatives transactions and thus promote innovation and competition.[8] A number of exemptions and exclusions for off-exchange derivatives transactions were subsequently added to the Act by the Commodity Futures Modernization Act of 2000,[9] but none apply to agricultural contracts.[10]

Part 35 requires, among other things, that a swap agreement not be part of a fungible class of agreements that are

[3] A copy of the petition is available on the Commission's Web site at *http://www.cftc.gov/.*

[4] The suite of OTC agricultural swap products that CBOT proposes to list for clearing-only is comprised of corn basis swap contracts for the following regions: Northeastern Iowa, Northwestern Iowa, Southern Iowa, Eastern Nebraska, Eastern South Dakota, and Southern Minnesota; and corn, wheat, and soybean calendar swaps.

[5] 17 CFR Part 35 (Commission regulations are hereinafter cited as ''Reg. __'').

[6] Jurisdiction is retained for, among other things, provisions of the Act proscribing fraud and manipulation. *See* Reg. 35.2.

[7] Reg. 35.1(b)(1)(i). ''Commodity'' is defined in Section 1a(4) of the Act to include a variety of specified agricultural products, ''and all other goods and articles, except onions... and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.''

[8] *See* 58 FR 5587 (Jan. 22, 1993). Section 4(c) of the Act was added by Section 502(a) of the Futures Trading Practices Act of 1992, Public Law 102–546, 106 Stat. 3590 (1992).

[9] Public Law 106–554, 114 Stat. 2763 (2000).

[10] *See, e.g.*, Sections 2(d), (g) and (h) of the Act, 7 U.S.C. 2(d), (g), and (h).

standardized as to their material economic terms,[11] and that the creditworthiness of any party having an interest under the agreement be a material consideration in entering into or negotiating the terms of the agreement.[12] Under the arrangement proposed by CME and CBOT, a cleared-only contract could be offset by another cleared-only contract with equivalent terms. In addition, due to the introduction of a clearing guarantee, the creditworthiness of the counterparty would no longer be a consideration. Accordingly, the OTC swaps CME would clear would not satisfy all of the conditions of Part 35.[13]

Part 35 permits ''any person [to] apply to the Commission for exemption from any of the provisions of the Act * * * for other arrangements or facilities.'' [14] CME and CBOT have petitioned the Commission for an order under Section 4(c) of the Act that would exempt certain cleared-only contracts involving corn, wheat, or soybeans to the same extent as contracts that are exempt pursuant to Part 35 of the Commission's regulations.

In addition, CME and CBOT also requested an order under Section 4d of the Act so that CME and clearing members of CBOT could hold positions in the cleared-only contracts and associated funds in the customer segregated account along with positions in exchange-traded futures and customer funds, resulting in improved collateral management and other benefits.

II. Sections 4(c) and 4d of the Act

A. Permitting the OTC Swaps To Be Cleared

In enacting Section 4(c) of the Act, Congress noted that the goal of the provision ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.'' [15] Section 4(c)(1) of the Act empowers the Commission to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions from any of the provisions of the Act (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest.[16] The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

Section 4(c)(2) of the Act provides that the Commission may grant exemptions from Section 4(a) of the Act only when the Commission determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts, or transactions at issue, and the exemption is consistent with the public interest and the purposes of the Act; that the agreements, contracts, or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory responsibilities under the Act.[17]

The Commission requested comment on whether it should grant an exemption from the requirements of the Act, thereby permitting corn basis swaps and corn, wheat, and soybean calendar swaps to be cleared through CME. It also requested comment on whether such an exemption would affect its ability to discharge its regulatory responsibilities under the Act or with the self-regulatory duties of any contract market.

B. Permitting Funds To Be Commingled

Section 4d(a)(2) of the Act prohibits commingling positions executed on a contract market and customer funds associated with such positions together with any funds not required to be so segregated.[18] Section 4d(a)(2) provides that the Commission may grant exceptions to this prohibition by order.

In this case, the corn basis swaps and corn, wheat, and soybean calendar swaps are not executed on a contract market and, thus, holding positions in those contracts and associated funds in an account together with positions and customer funds required to be segregated would, absent a Commission order, violate Section 4d. Having analyzed the risks and benefits associated with commingling such positions and funds in a customer segregated account, the Commission has determined that the benefits of the proposal outweigh the risks and that the proposal, along with conditions set forth by the Commission, will provide for a sufficient level of safeguards to address the risks adequately.

III. Comment Letters

The Commission published a request for comments regarding the 4(c) exemption in the **Federal Register** on July 7, 2008.[19] At the same time, it posted the Petition on the Commission's Web site, providing the opportunity for the public to comment on any aspect of the Petition, including the request for an order under Section 4d of the Act. As a result of the non-transmission of a comment letter submitted through the Federal eRulemaking Portal, the Commission reopened the comment period on December 31, 2008,

[11] Reg. 35.2(b).

[12] Reg. 35.2(c).

[13] The contracts that CBOT proposes to list for clearing-only would, however, meet the requirements of Reg. 35.2(a) and (d) in that they would be entered into solely between eligible swap participants and executed OTC, respectively.

[14] Reg. 35.2(d).

[15] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213.

[16] Section 4(c)(1) of the Act, 7 U.S.C. 6(c)(1), provides in full as follows:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except subparagraphs (c)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

[17] Section 4(c)(2) of the Act, 7 U.S.C. 6(c)(2), provides in full as follows:

The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—

(A) The requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) The agreement, contract, or transaction—

(i) Will be entered into solely between appropriate persons; and

(ii) Will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

[18] Under Reg. 1.3(gg), the term ''customer funds'' is defined to include all money, securities, and property received by an FCM or by a DCO from, for, or on behalf of, customers or option customers to margin, guarantee or secure exchange-traded futures contracts or options on futures, and all money accruing to such customers as the result of such contracts. The term ''funds'' is similarly used herein to refer to cash as well as securities and other property associated with futures contracts or cleared-only contracts.

[19] *See* 73 FR 38403 (July 7, 2008) (45-day comment period closing August 21, 2008).

specifically to afford the commenter whose submission was not received, the opportunity to resubmit the comment.[20] In addition, any other member of the public was permitted to comment during the reopened comment period.

The Commission received seven comment letters, one of which was submitted during the reopened comment period. Five letters expressly supported the issuance of an exemptive order to permit clearing of the OTC swaps, citing such benefits as increased transparency and liquidity in the OTC markets, enhanced risk management for market participants, and greater regulatory surveillance including large trader reporting. Of those letters, two specifically commented on the 4d order request. Both of those letters supported the issuance of an order to permit the commingling of positions in cleared-only contracts and associated funds with positions and customer funds otherwise required to be held in a customer segregated account. One letter focused on the bankruptcy treatment of cleared-only contract positions and associated funds when they are held in a customer segregated account.[21] One commenter opposed the issuance of an exemption permitting clearing of OTC swaps based on concerns about the impact of OTC clearing on the use of exchange-traded futures contracts for hedging purposes.

IV. Findings and Conclusions

After considering the complete record in this matter, including the comments received, the Commission finds that the requirements of Section 4(c) of the Act have been met with respect to the request for an order permitting the clearing of certain corn basis swaps and corn, wheat, and soybean calendar swaps.

First, permitting the clearing of these transactions is consistent with the public interest and with the purposes of the Act. The purposes of the Act include ''promot[ing] responsible innovation and fair competition among boards of trade, other markets, and market participants.'' [22] The purpose of an exemption is ''to promote economic or financial innovation and fair competition.'' [23] Permitting the clearing of corn basis swaps and corn, wheat, and soybean calendar swaps by CME would appear to foster both financial innovation and competition. It could benefit the marketplace by providing eligible swap participants the ability to bring together flexible negotiation with central counterparty guarantees and capital efficiencies. Clearing also may increase the liquidity of the OTC markets and thereby foster competition in those markets.

Second, the OTC swaps would be entered into solely between appropriate persons. Those would be limited to persons qualifying as eligible swap participants under Part 35.[24]

Third, the exemption would not have a material adverse effect on the ability of the Commission or any designated contract market to carry out its regulatory or self-regulatory responsibilities under the Act. Clearing of OTC swaps will actually enhance the Commission's ability to carry out its regulatory responsibilities by, for example, facilitating the collection of large trader reports for cleared-only contracts. CME will use the same systems, procedures, personnel, and processes to clear the OTC swaps as it currently employs with respect to all of the other transactions it clears on behalf of CBOT.

The commenter who opposed granting the exemption raised a question as to how clearing OTC swaps would impact trading in the corresponding futures contracts, expressing the view that the ability to clear OTC contracts would serve as a disincentive to enter into exchange-traded futures contracts, thereby drawing business away from those markets to OTC markets. Given the lack of empirical data relating to the trading behavior of futures market participants when clearing becomes available for OTC products, the basis for the commenter's concerns cannot be readily substantiated or refuted. As a result, the Commission is unable to conclude that providing eligible swap participants with the opportunity to clear OTC swaps would undermine the purpose or usefulness of trading in the futures markets. Moreover, because eligible swap participants already engage in OTC transactions, permitting clearing would provide a means for achieving benefits that serve the public interest.

The Commission has concluded that permitting the clearing of OTC corn basis swaps and corn, wheat, and soybean calendar swaps, subject to the terms and conditions of the order, furthers the goals of market transparency and liquidity, and financial risk management. It also enhances the Commission's ability to obtain market information and conduct oversight once OTC transactions are cleared by a registered DCO.

With respect to the petitioners' request for an order pursuant to Section 4d permitting CME and FCMs clearing through CME to commingle cleared-only contract positions and associated funds with positions and customer funds required to be held in a customer segregated account, the Commission has considered whether the additional risk to customers presented by such commingling can be adequately addressed and mitigated. Additional risk is presented to customers as a result of the risk of default involving the commingled cleared-only contracts.

The carrying FCM should have adequate means to address a default by a customer holding cleared-only contracts. In the event of a customer default on a position in a cleared-only corn basis swap, the clearing firm could offset its risk by entering into an opposite position in the OTC corn basis swap market through a broker or dealer. Alternatively, the clearing firm could offset its risk by entering into an opposite transaction in the cash corn basis market, which is very liquid due to participation by country elevators, terminal elevators, ethanol processors, and livestock feeders. In the event of a customer default on a position in the corn, wheat, or soybean cleared-only calendar swaps contracts, the clearing firm could offset its risk by liquidating the customer position through a broker or dealer in the calendar swap market or by taking an economically equivalent position in the corresponding futures contract.

The order requires that CME review the clearing members' risk management capabilities to verify that all members clearing OTC swaps maintain sufficient operational capability to manage a default in a cleared-only contract. In the event of a clearing firm default, CME would have available the same means for managing the default as the clearing firm would have in the first instance.

The order also requires that CBOT (1) maintain a coordinated market surveillance program that encompasses the cleared-only contracts and the corresponding futures contracts, and (2) adopt speculative position limits for each of the cleared-only contracts, that are the same as the limits applicable to the corresponding futures contracts. These measures should mitigate market risk.

Accordingly, the Commission has determined that CME will be able to employ reasonable safeguards to protect customer funds, and that it will be able

[20] *See* 73 FR 80367 (Dec. 31, 2008) (reopening the comment period for 21 days).

[21] This bankruptcy matter was subsequently addressed in an Interpretative Statement issued by the Commission on September 26, 2008. *See* 73 FR 65514 (Nov. 4, 2008).

[22] Section 3(b) of the Act, 7 U.S.C. 5(b).

[23] Section 4(c)(1) of the Act, 7 U.S.C. 6(c)(1).

[24] *See* Reg. 35.1(b)(2) (defining the term ''eligible swap participant'').

to measure, monitor, manage, and account for risks associated with transactions and open interest in the cleared-only contracts as it does for other contracts it clears. The Commission believes that CME has sufficiently demonstrated that it will continue to comply with the DCO core principles set forth in Section 5b of the Act in connection with holding customer positions in cleared-only corn basis swaps and corn, wheat, and soybean calendar swaps and associated funds with positions and customer funds required to be held in a customer segregated account pursuant to Section 4d of the Act.

V. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) [25] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission's order will not require a new collection of information from any entities that would be subject to the order.

B. Cost-Benefit Analysis

Section 15(a) of the Act,[26] requires the Commission to consider the costs and benefits of its action before issuing an order under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has considered the costs and benefits of this order in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of Market Participants and the Public.* The cleared-only contracts will be entered into only by persons who are ''appropriate persons'' as set forth in Section 4(c) of the Act. Only eligible swap participants will enter into the corn basis swaps and corn, wheat, and soybean calendar swaps that will be cleared pursuant to the Commission's order. Allowing the commingling of positions in cleared-only contracts and associated funds with positions and customer funds required to be segregated under Section 4d of the Act will benefit market participants by facilitating clearing and the reduction of credit risk for contracts that meet market participants' specific risk management requirements. Customers holding positions in cleared-only contracts also would benefit from having those positions and associated funds held in a customer segregated account in the event of the insolvency of an FCM. Futures customers will be protected from risks associated with the commingling of funds by a number of existing risk management and other safeguards, including CME's financial surveillance of clearing members and its financial resources package, as supplemented by conditions imposed by the order.

2. *Efficiency and Competition.* Allowing the OTC swaps to be cleared appears likely to promote liquidity and transparency in the markets for OTC derivatives as well as futures on those commodities. The commingling of positions in the cleared-only contracts and associated funds with positions and customer funds required to be held in a customer segregated account should result in improved, more efficient, collateral management and lower administrative costs given that risk-reducing positions will be held together in the same account rendering a more precise estimation of the risk posed by the account. The availability of cleared-only contracts also provides another risk management tool that could compete with other OTC products.

3. *Financial Integrity of Futures Markets and Price Discovery.* Price discovery is likely to be enhanced by bringing greater transparency to the OTC market for the subject commodities. The Section 4(c) exemption also may promote financial integrity by providing the benefits of clearing to the OTC markets. As discussed above, the Commission believes that the risks associated with the commingling of funds in the customer segregated account can be appropriately mitigated.

4. *Sound Risk Management Practices.* Clearing of the OTC swaps is likely to improve risk management by the participant counterparties. CME's risk management practices in clearing these transactions are subject to the Commission's supervision and oversight.

5. *Other Public Interest Considerations.* The action taken by the Commission under Sections 4(c) and 4d of the Act is likely to encourage market competition in agricultural derivatives products. It will also further the Commission's overall goals in supporting greater market transparency, credit risk management, and regulatory oversight by encouraging the clearing of OTC products.

The Commission requested comment on its application of these factors in the proposing release. No comments were received.

VI. Order

After considering the above factors and the comment letters received in response to its request for comments, the Commission has determined to issue the following:

Order

(1) The Commission, pursuant to its authority under Section 4(c) of the Act and subject to the conditions below, hereby permits eligible swap participants to submit for clearing, and FCMs and CME to clear, the following OTC agricultural swap contracts (eligible products):

(a) Corn basis swap contracts for the following regions:

(i) Northeastern Iowa;

(ii) Northwestern Iowa;

(iii) Southern Iowa;

(iv) Eastern Nebraska;

(v) Eastern South Dakota; and

(vi) Southern Minnesota.

(b) Corn calendar swap contracts.

(c) Wheat calendar swap contracts.

(d) Soybean calendar swap contracts.

(2) The Commission, pursuant to its authority under Section 4d of the Act and subject to the conditions below, hereby permits CME and clearing members of CBOT that are registered FCMs, acting pursuant to this order, to hold money, securities, and other property, used to margin, guarantee, or secure cleared-only transactions in eligible products (cleared-only contracts), and belonging to customers that are eligible swap participants, with other customer funds used to margin, guarantee, or secure trades or positions in commodity futures or commodity option contracts executed on or subject to the rules of a contract market designated pursuant to Section 5 of the

[25] 44 U.S.C. 3507(d).

[26] 7 U.S.C. 19(a).

Act, in a customer segregated account or accounts maintained in accordance with Section 4d of the Act (including any orders issued pursuant to Section 4d(a)(2) of the Act) and the Commission's regulations thereunder, and all such customer funds shall be accounted for and treated and dealt with as belonging to the customers of the CBOT clearing member, consistent with Section 4d of the Act and the regulations thereunder.

(3) This order is subject to the following conditions:

(a) The contracts, agreements, or transactions subject to this order shall be executed pursuant to the requirements of Part 35 of the Commission's regulations, as modified herein, and shall be limited to the eligible products enumerated in this order.

(b) All eligible products shall be submitted for clearing by a CBOT clearing member to CME pursuant to CBOT and CME rules.

(c) Each cleared-only contract shall be marked to market on a daily basis, and final settlement prices shall be established in accordance with CBOT rules.

(d) CME shall apply its margining system and calculate performance bond rates for each cleared-only contract in accordance with its normal and customary practices.

(e) CME shall apply appropriate risk management procedures with respect to transactions and open interest in the cleared-only contracts. CME shall conduct financial surveillance and oversight of CBOT members clearing the eligible products, and it shall conduct oversight sufficient to assure CME that each such member has the appropriate operational capabilities necessary to manage defaults in such contracts. CME and clearing members of CBOT, acting pursuant to this order, shall take all other steps necessary and appropriate to manage risk related to clearing eligible products.

(f) CBOT shall make available open interest and settlement price information for the cleared-only contracts on a daily basis in the same manner as for contracts listed on CBOT.

(g) CBOT shall establish and maintain a coordinated market surveillance program that encompasses the cleared-only contracts and the corresponding futures contracts listed by CBOT on its designated contract market.

(h) CBOT shall adopt speculative position limits for each of the cleared-only contracts that are the same as the limits applicable to the corresponding futures contracts pursuant to Commission Regulation 150.2.

(i) The cleared-only contracts shall not be treated as fungible with any contract listed for trading on CBOT.

(j) Each FCM acting pursuant to this order shall keep the types of information and records that are described in Section 4g of the Act and Commission regulations thereunder, including but not limited to Commission Regulation 1.35, with respect to all cleared-only contracts. Such information and records shall be produced for inspection in accordance with the requirements of Commission Regulation 1.31.

(k) CBOT shall provide to the Commission the types of information described in Part 16 of the Commission's regulations in the manner described in Parts 15 and 16 of the Commission's regulations with respect to all cleared-only contracts.

(l) CBOT shall apply large trader reporting requirements to cleared-only contracts in accordance with its rules, and each FCM acting pursuant to this order shall provide to the Commission the types of information described in Part 17 of the Commission's regulations in the manner described in Parts 15 and 17 of the Commission's regulations with respect to all cleared-only contracts in which it participates.

(m) CME and CBOT shall at all times fulfill all representations made in their requests for Commission action under Sections 4(c) and 4d of the Act and all supporting materials thereto.

This order is based upon the representations made and supporting material provided to the Commission by CME and CBOT in connection with their requests. Any material change or omission in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its finding that the actions taken herein are appropriate. Further, in its discretion, the Commission may condition, suspend, terminate, or otherwise modify this order, as appropriate, on its own motion.

Issued in Washington, DC, on March 18, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–6369 Filed 3–23–09; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0046]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) proposes to add a new system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This Action will be effective without further notice on April 23, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (720) 242–6631.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 16, 2009, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated December 12, 2000, 65 FR 239.

Dated: March 18, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T5040

SYSTEM NAME:

Call Recording Application Records.

SYSTEM LOCATION:

Defense Finance and Accounting Service, Cleveland, Anthony J. Celebrezze Federal Building (Room 1669), 1240 E. 9th Street, Cleveland, OH 44199–2055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former military service members, dependents, ex-spouses, DoD civilian employees, and non-DoD civilians paid by DFAS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Audio and captured systems' screen records and their indices that will include, but not be limited to, verbatim recordings of conversations between the customers and DFAS' customer service representatives (CSR), name, SSN, home address, telephone number, payroll information, marital status, dependent information, tax status, allotment, garnishment, debt, or other payroll or personal information provided by the customer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 12862 (Customer Service), E.O. 9397 (SSN).

PURPOSE(S):

The Call Recording Application (CRA) will be used to record and index telephone conversations between customers and customer service representatives (CSRs) in DFAS' contact centers. It will also capture and index a sampling of the computer screens used by CSRs to answer inquiries. The inbound calls will be recorded in order to resolve misunderstandings or misperceptions made during the customer-CSR interaction. This system will also facilitate the process of monitoring and evaluating the recorded audio and computer screens used by CSRs in order to provide training, collect data in support of the CSRs' annual performance evaluation, and provide information used for business process improvements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'DoD Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Social Security Number (SSN) and telephone number.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Destroy when superseded, obsolete, or determined to be of no further value, whichever is sooner. Records are destroyed by shredding, burning, or degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service, Information and Technology, Anthony J. Celebrezze Federal Building, 1240 E. 9th Street, Cleveland, OH 44199–2055.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number (SSN), current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should furnish full name, Social Security Number (SSN), current address and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

RECORD SOURCE CATEGORIES:

The individual concerned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–6279 Filed 3–23–09; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or April 23, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 18, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: New

Title: Leveraging Educational Technology to Keep America Competitive: National Teacher Technology Study

Frequency: On Occasion

Affected Public: Individuals or household

Reporting and Recordkeeping Hour Burden:

Responses: 320

Burden Hours: 195

Abstract: The LevTech study will document and describe the technology experiences incorporated into pre-service teacher preparation programs, as well as document how teachers currently use technology in their classrooms. Clearance is being requested for the multiple case study research design, sampling strategy, and data collection activities to be undertaken by the LevTech study. These collections will gather in-depth information on ten teacher education programs. Data collected from the selected teacher education programs will include a maximum of 15 individual interviews (educational technology faculty, methods faculty, preservice teachers), as well as a maximum of ten induction teacher graduates of the teacher education program (graduated in the last five years). Within each case, we will collect information from two different constructs: (1) the teacher education program (documents, website, educational technology faculty, methods faculty, preservice teachers) and (2) induction teacher graduates of the teacher education program (1–5 years).

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3726. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–6431 Filed 3–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 23, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 18, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Part B, Individuals With Disabilities Education Act Implementation of FAPE Requirements.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60.

Burden Hours: 407,160.

Abstract: This package provides instructions and forms necessary for States to report the extent to which children with disabilities served under the Individuals with Disabilities Education Act (IDEA)–B receive special education and related services with their non-disabled peers. The Office for Special Education Programs (OSEP) uses the information collected on this form to monitor States to ensure compliance with Federal statute and regulations, to disseminate data to Congress and the public, and for program improvement purposes.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3427. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet *address ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–6433 Filed 3–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 23, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 19, 2009.

Angela C. Arrington,

Director, IC Clearance Official Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Title 34 CFR Part 602 The Secretary's Recognition of Accrediting Agencies.

Frequency: Annually and every 5 years.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 73.
Burden Hours: 1,241.

Abstract: In compliance with Title 34 CFR Part 602, this information is required to determine if an accrediting agency complies with the Secretary of Education's Criteria for Recognition. Only postsecondary institutions accredited by such a Recognized accrediting agency may obtain Title IV funding for its students.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3931. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–6442 Filed 3–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 26, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 18, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New.

Title: Evaluation of State and Local Implementation of Title III Standards, Assessments, and Accountability Systems.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,940.
Burden Hours: 1,600.

Abstract: This data collection will serve to update State-level information about Title III implementation and will also provide an important opportunity to go beyond the mechanics of

implementation at the State level to understand: Whether and how States and districts are making the necessary connections between English language proficiency (ELP) and academic learning; how the law's standards, assessment, and accountability mechanisms are being translated at the local level into instructional decisions and improvement strategies for limited English proficient (LEP) students; whether Title III implementation takes into account the many layers of diversity in the LEP population; and how LEP students are faring in both ELP and subject matter learning. The mixed-methods data collection and analyses will enable the study to answer a series of key evaluation questions and to deepen understanding of the extent to which Title III is achieving its underlying goals. The study has four interrelated objectives: (1) To describe the progress in implementation of Title III provisions, and variation in implementation across States; (2) To examine how localities are implementing their programs for LEP students and how these relate to State policies and contexts; (3) To determine how LEP students are faring in the development of their ELP and mastery of academic content; and (4) To maintain a focus, in all project data collection and analysis activities, on the diversity among LEP students—for example, in their concentrations, languages, ages, length of residence in the U.S.—and the educational implications of this diversity. The study will produce several policy-relevant reports and presentations including: In-person briefings for ED staff each year of the contract (three briefings total); a user-friendly policy brief and fact sheet in both Years 2 and 3 of the study, targeting policymakers, educators, media, and the public; dissemination of the fact sheet and non technical executive summary for each report completed to the study participants; dissemination of the reports, non technical executive summaries, policy briefs, and fact sheets to a number of audiences through organizations that focus on the instructional needs of LEP students; and submission of proposals for several staff members to conduct presentations at two professional and/or practitioner conferences during Years 2 and 3 of the study. The proposed study will include: A thorough review of standards and assessments; a complete set of interviews of State Title III and assessment directors; a nationally representative survey of districts receiving Title III funds; in depth case studies in five States, including two districts within each State; an analysis of longitudinal student achievement data; and an analysis of trends in State achievement. Respondents will include 51 State Title III directors, 1,300 District Title III administrators, 96 other district administrators, 192 Elementary and Secondary school principals and resource staff, 192 Elementary and Secondary teachers, and 96 parent liaisons.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3992. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537.

Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–6453 Filed 3–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 26, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 18, 2009.

Angela C. Arrington,

Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: IEPS Learning Resource Center (LRC) Customer Surveys.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 416.

Burden Hours: 194.

Abstract: The purpose of this evaluation is to assess the impact of the Language Resource Center (LRC) program in enhancing the foreign language capacity of the United States. Three surveys will be conducted: a survey of LRC Project Directors; a survey of all members of the National Association of District Supervisors of Foreign Languages; and a survey of LRC Summer workshop participants. Results from the three surveys will inform the writing of a final report determining the impact of the LRC program.

Requests for copies of the proposed information collection request may be

accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3975. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–6455 Filed 3–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Overview Information; Business and International Education Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.153A.

Dates:

Applications Available: March 24, 2009.

Deadline for Transmittal of Applications: April 23, 2009.

Deadline for Intergovernmental Review: June 22, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Business and International Education Program provides grants to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Priorities: This competition includes one competitive preference priority and three invitational priorities that are explained in the following paragraphs.

Competitive Preference Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 661.32). For FY 2009, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award an additional five points to an application that meets this priority.

This priority is:

The establishment of internships overseas to enable foreign language students to develop their foreign language skills and their knowledge of foreign cultures and societies.

Invitational Priorities: For FY 2009, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority I:

Applications that focus on any of the following seventy-eight (78) languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs):

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Invitational Priority II:

Applications that focus on one or more of the following: developing, improving and disseminating best practices of international business training programs, teaching, and curriculum development to increase American competitiveness.

Invitational Priority III:

Applications that focus on increasing the numbers of underrepresented minorities in foreign languages and area and international studies.

Program Authority: 20 U.S.C. 1130–1130b.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations in 34 CFR parts 655 and 661.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Areas of National Need:

In accordance with section 601(c) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1121 (c), the Secretary has consulted with and received recommendations regarding the national need for expertise in foreign languages and world regions from the head officials of a wide range of Federal agencies. These recommendations have been taken into account in developing the request for applications for funding during this grant cycle. A list of foreign languages and world regions identified as areas of national need may be found on the following Web sites: *http://www.ed.gov/about/offices/list/ope/policy.html, http://www.ed.gov/programs/iegpsbie/legislation.html*

Also included on these web sites are the specific recommendations the Secretary received from Federal agencies.

Program Assurances: Each application must include an assurance that, where applicable, the activities funded by this grant will reflect diverse perspectives and a wide range of views on world regions and international affairs. (20 U.S.C. 1130a(c)).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: We propose to allocate $2,223,961 for new awards for this program for FY 2009. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000-$95,000.

Estimated Average Size of Awards: $84,000.

Maximum Award: We will reject any application that proposes a budget exceeding $95,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education that have entered into agreements with business enterprises,

trade organizations, or associations that are engaged in international economic activity—or a combination or consortium of these enterprises, organizations, or associations—for the purposes of pursuing the activities authorized under this program.

2. *Cost Sharing or Matching:* The matching requirement is described in section 613(d) of the HEA, (20 U.S.C. 1130a(d)). The HEA provides that the applicant's share of the total cost of carrying out a program supported by a grant under the Business and International Education Program must be no less than 50 percent of the total cost of the project in each fiscal year. The non-Federal share of the cost may be provided either in-kind or in cash.

IV. Application and Submission Information

1. *Address to Request Application Package:* Tanyelle Richardson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6017, Washington, DC 20006–8521. Telephone: (202) 502–7626 or by e-mail: *tanyelle.richardson@ed.gov*.

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to no more than 40 pages, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.

• Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, figures, and graphs. These items may be single-spaced. Charts, tables, figures, and graphs in the application narrative *count* toward the page limit.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); and Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. However, the page limit does apply to all of the application narrative section [Part III]. If you include any attachments or appendices not specifically requested, these items will be counted as part of the application narrative [Part III] for purposes of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: March 24, 2009.

Deadline for Transmittal of Applications: April 23, 2009.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: June 22, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Business and International Education Program, CFDA number 84.153A, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Business and International Education Program at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.153 not 84.153A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC

time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• 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 do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Tanyelle Richardson, U.S. Department of Education, 1990 K Street, NW., room 6017, Washington, DC 20006–8521. FAX: (202) 502–7859.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.153A),
LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.153A),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 661.31 and are as follows: (a) Need for the project (25 points); (b) plan of operation (20 points); (c) qualifications of the key personnel (10 points); (d) budget and cost effectiveness (15 points); (e) evaluation plan (25 points); and (f) adequacy of resources (5 points).

2. *General:* For FY 2009, applications are randomly divided into groupings. International business and outreach experts, organized into panels of three, will review each application. Each panel reviews, scores, and ranks its applications separately from the applications assigned to the other panels. However, ultimately, all applications, without being divided into groups, will be ranked from the highest to the lowest score for funding purposes.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument, International Resource Information System (IRIS), to complete both the annual and final reports. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The purpose of the Business and International Education Program (BIE) is to provide funds to institutions of higher education that enter into agreements with trade associations or businesses for one or both of the following purposes: To improve the academic teaching of the business curriculum at institutions of higher education and to conduct outreach activities that expand the capacity of the business community to engage in international economic activities.

The Department will use the following BIE measures to evaluate its success in meeting this objective:

Performance Measure 1: The number of outreach activities that are adopted or disseminated within a year, divided by the total number of BIE outreach activities conducted in the current reporting period.

Performance Measure 2: Percentage of all BIE projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

Efficiency Measure: Cost per high-quality, successfully completed project.

The Department will use information provided by grantees in their performance reports submitted via IRIS as the source of data for these measures. Reporting screens for institutions can be viewed at: *http://www.ieps-iris.org/iris/pdfs/BIE.pdf.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Ms. Tanyelle Richardson, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6017, Washington, DC 20006–8521. Telephone: (202) 502–7626 or by e-mail: *tanyelle.richardson@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER**

INFORMATION CONTACT in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/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.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education to perform the function of the Assistant Secretary for Postsecondary Education.

Dated: March 19, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–6440 Filed 3–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; International Research and Studies Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.017A.

Dates:

Applications Available: March 24, 2009.

Deadline for Transmittal of Applications: April 23, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The International Research and Studies (IRS) Program provides grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 660.10 and 660.34).

Competitive Preference Priorities: For FY 2009, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional five points to an application that meets one or more of these priorities.

These priorities are:

Competitive Preference Priority 1—Instructional Materials Applications.

The development of specialized instructional or assessment materials focused on any of the following seventy-eight (78) languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs):

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority 2—Research, Surveys, and Studies Applications.

Research, surveys, assessments, or studies focused on any of the following seventy-eight (78) languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs):

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Note: You will receive an additional five points for meeting a competitive preference priority in your application. Applicants are expected to address only one competitive preference priority in each application, but regardless of how many priorities are addressed, no more than five points in total can be awarded to a single application.

Program Authority: 20 U.S.C. 1125.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR parts 655 and 660.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Areas of National Need: In accordance with section 601(c) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1121(c), the Secretary has consulted with and received recommendations regarding national need for expertise in foreign languages and world regions from the head officials of a wide range of Federal agencies. The Secretary has taken these recommendations into account and a list of foreign languages and world regions identified by the Secretary as areas of national need may be found on the following Web sites:

http://www.ed.gov/about/offices/list/ope/policy.html
http://www.ed.gov/programs/iegpsirs/legislation.html

Also included on these Web sites are the specific recommendations the Secretary received from Federal agencies.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: We propose to allocate $2,550,000 for new awards for this program for FY 2009. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$200,000 per year.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Public and private agencies, organizations, institutions, and individuals.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Carla White, U.S. Department of Education, 1990 K Street, NW., Room 6085, Washington, DC 20006–8521. Telephone: (202) 502–7636; or by e-mail: *carla.white@ed.gov.*

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. The International Research and Studies Program has two schedules. Research, surveys, and studies applicants must use the application package for 84.017A–1. Instructional materials applicants must use the application package for 84.017A–3.

Page Limit: The project narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the project narrative [Part III] to the equivalent of no more than 30 pages, using the following standards:

• A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.

• Double space (no more than three lines per vertical inch) all text in the project narrative, *except* titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, figures, and graphs. These items may be single spaced. Charts, tables, figures, and graphs in the project narrative count toward the page limit.

• Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); or Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices not specifically requested, these items will be counted as part of your project narrative [Part III] for purposes of the page limit requirement. You must include your complete response to the selection criteria in the project narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: March 24, 2009.

Deadline for Transmittal of Applications: April 23, 2009.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the International Research and Studies Program, CFDA number 84.017A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the International Research and Studies Program at *http://www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.017, not 84.017A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline

requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

- 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 do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carla White, U.S. Department of Education, 1990 K Street, NW., Room 6085, Washington, DC 20006–8521. FAX: (202) 502–7860.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.017A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.017A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR sections 655.31, 660.31, 660.32, and 660.33 and are as follows:

For instructional materials—

Need for the project (10 points); Potential for the use of materials in other programs (5 points); Account of related materials (10 points); Likelihood of achieving results (10 points); Expected contribution to other programs (5 points); Plan of operation (10 points); Quality of key personnel (5 points); Budget and cost effectiveness (5 points); Evaluation plan (15 points); Adequacy of resources (5 points); Description of final form of materials (5 points); and Provisions for pretesting and revision (15 points).

For research, surveys and studies—

Need for the project (10 points); Usefulness of expected results (10 points); Development of new knowledge (10 points); Formulation of problems and knowledge of related research (10 points); Specificity of statement of procedures (5 points); Adequacy of methodology and scope of project (10 points); Plan of operation (10 points); Quality of key personnel (10 points); Budget and cost effectiveness (5 points); Evaluation plan (15 points); and Adequacy of resources (5 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument International Resource Information System (IRIS) to complete the final report. Electronically formatted instructional materials such as CDs, DVDs, videos, computer diskettes and books produced by the grantee as part of the grant approved activities are also acceptable as final reports. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The objective for the International Research and Studies Program is to support surveys, studies, and the development of instructional materials to improve and strengthen instruction in modern foreign languages, area studies, and other international fields. The Department will use the following measures to evaluate the success of the International Research and Studies Program:

Performance Measure 1: Percentage of International Research and Studies Program projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

Performance Measure 2: Number of outreach activities that are adopted or disseminated within a year, divided by the total number of International Research and Studies outreach activities conducted in the current reporting period.

Efficiency Measure: Cost per high-quality, successfully completed International Research and Studies project.

The information provided by grantees in their performance reports submitted via the electronic International Resource Information System (IRIS) will be the source of data for these measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Eisen, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., Room 6087, Washington, DC 20006–8521. Telephone: (202) 502–7636; or, by e-mail: *samuel.eisen@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact

person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/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.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: March 19, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–6449 Filed 3–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Native Hawaiian Career and Technical Education Program (NHCTEP); Notice Inviting Applications for New Awards Using Fiscal Year (FY) 2008 Funds.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.259A.

Dates:

Applications Available: March 24, 2009.

Deadline for Transmittal of Applications: April 23, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Native Hawaiian Career and Technical Education Program (NHCTEP) provides grants to eligible applicants to plan, conduct, and administer programs, or portions of programs, that are authorized by and consistent with the purposes of section 116 of the Carl D. Perkins Career and Technical Education Act of 2006 (Act) for the benefit of Native Hawaiians.

Background: Under section 116(h) of the Act, eligible community-based organizations receive NHCTEP grants to plan, conduct, and administer programs, or portions thereof, that are consistent with the purposes of section 116 of the Act, for the benefit of Native Hawaiians. Section 116(e) of the Act provides that educational programs, services, and activities funded under NHCTEP must support and help to improve career and technical education programs. (20 U.S.C. 2326(e)) This requirement, along with the statutory definition of career and technical education, aligns NHCTEP with other programs authorized under the Act that require grantees to offer a sequence of courses that provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions. (20 U.S.C. 2302(5))

Under this competition the Secretary awards grants to carry out projects that provide organized educational activities offering a sequence of courses that—

(a) Provide individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions;

(b) Provide technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree; and

(c) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual. Projects may include prerequisite courses (other than remedial courses) that meet the definitional requirements of section 3(5)(A) of the Act. (20 U.S.C. 2302(5)(A)).

Requirements: The Assistant Secretary for Vocational and Adult Education has established the following requirements for this program. These requirements are from the notice of final requirements, definitions, and selection criteria published elsewhere in this issue of the **Federal Register**.

Authorized Programs, Services, and Activities:

(a) *Authorized Programs.* Under this competition the Secretary awards grants to carry out projects that—

(1) Develop new programs, services, or activities or improve or expand existing programs, services, or activities that are consistent with the purposes of the Act. In other words, the Department will support ''expansions'' or ''improvements'' that include, but are not necessarily limited to, the expansion of effective programs or practices; upgrading of activities, equipment, or materials; increasing staff capacity; adoption of new technology; modification of curriculum; or implementation of new policies to improve program effectiveness and outcomes; and

(2) Fund a career and technical education program, service, or activity that—

(i) Is a new program, service, or activity that was not provided by the applicant during the instructional term (a defined period, such as a semester, trimester, or quarter, within the academic year) that preceded the request for funding under NHCTEP;

(ii) Will improve or expand an existing career and technical education program; or

(iii) Inherently improves career and technical education. A program, service, or activity ''inherently improves career and technical education'' if it—

(A) Develops new career and technical education programs of study for approval by the appropriate accreditation agency;

(B) Strengthens the rigor of the academic and career and technical components of funded programs;

(C) Uses curriculum that is aligned with industry-recognized standards and will result in students attaining industry-recognized credentials, certificates, or degrees;

(D) Integrates academics (other than remedial courses) with career and technical education programs through a coherent sequence of courses to help ensure learning in the core academic and career and technical subjects;

(E) Links career and technical education at the secondary level with career and technical education at the postsecondary level, and facilitates students' pursuit of a baccalaureate degree;

(F) Expands the scope, depth, and relevance of curriculum, especially content that provides students with a comprehensive understanding of all aspects of an industry and a variety of hands-on, job-specific experiences; or

(G) Offers—

(*1*) Work-related experience, internships, cooperative education, school-based enterprises, studies in entrepreneurship, community service learning, and job shadowing that are

related to career and technical education programs;

(*2*) Coaching/mentoring, support services, and extra help for students after school, on the weekends, or during the summer so they can meet higher standards;

(*3*) Career guidance and academic counseling for students participating in career and technical education programs under NHCTEP;

(*4*) Placement services for students who have successfully completed career and technical education programs and attained a technical skill proficiency that is aligned with industry-recognized standards;

(*5*) Professional development programs for teachers, counselors, and administrators;

(*6*) Strong partnerships among grantees and local educational agencies, postsecondary institutions, community leaders, adult education providers, and, as appropriate, other entities, such as employers, labor organizations, parents, and local partnerships, to enable students to achieve State academic standards and attain career and technical skills;

(*7*) The use of student assessment and evaluation data to continually improve instruction and staff development; or

(*8*) Research, development, demonstration, dissemination, evaluation and assessment, capacity-building, and technical assistance related to career and technical education programs.

(b) *Student stipends.*

(1) A portion of an award under this program may be used to provide stipends (as defined elsewhere in this notice under the heading *Definitions*) to help students meet the costs of participation in a NHCTEP project.

(2) To be eligible for a stipend a student must—

(i) Be enrolled in a career and technical education project funded under this program;

(ii) Be in regular attendance in a NHCTEP project and meet the training institution's attendance requirement;

(iii) Maintain satisfactory progress in his or her program of study according to the training institution's published standards for satisfactory progress; and

(iv) Have an acute economic need that—

(A) Prevents participation in a project funded under this program without a stipend; and

(B) Cannot be met through a work-study program.

(3) The amount of a stipend is the greater of either the minimum hourly wage prescribed by State or local law, or the minimum hourly wage established under the Fair Labor Standards Act.

(4) A grantee may award a stipend only if the stipend combined with other resources the student receives does not exceed the student's financial need. A student's financial need is the difference between the student's cost of attendance and the financial aid or other resources available to defray the student's cost of attending a NHCTEP project.

(5) To calculate the amount of a student's stipend, a grantee must multiply the number of hours a student actually attends career and technical education instruction by the amount of the minimum hourly wage that is prescribed by State or local law or by the minimum hourly wage that is established under the Fair Labor Standards Act. The grantee must reduce the amount of a stipend if necessary to ensure that it does not exceed the student's financial need.

Example: If a grantee uses the Fair Labor Standards Act minimum hourly wage of $7.25 and a student attends classes for 20 hours a week, the student's stipend would be $145 for the week during which the student attends classes ($7.25 x 20 = $145). If the program lasts 16 weeks and the student's total financial need is $2,000, the grantee must reduce the weekly stipend to $125, because the total stipend for the course would otherwise exceed the student's financial need by $320 (or $20 a week).

Note: Grantees must maintain records that fully support their decisions to award stipends to students, as well as the amounts that are paid, such as proof of a student's enrollment in the NHCTEP project, stipend applications, timesheets showing the number of hours of student attendance that are confirmed in writing by an instructor, student financial status information, and evidence that a student could not participate in the NHCTEP project without a stipend. (*See generally* 20 U.S.C. 1232f; 34 CFR 75.700–75.702; 75.730; and 75.731)

(6) An eligible student may earn a stipend when taking a course for the first time, although a stipend may not be provided to a student for a particular course if the student has already taken, completed, and had the opportunity to benefit from the course and is merely repeating the course.

(7) An applicant must include, in its application, the procedure it intends to use in determining student eligibility for stipends and stipend amounts, and its oversight procedures for the awarding and payment of stipends.

(c) *Direct assistance to students.* A grantee may provide direct assistance (as defined elsewhere in this notice under the heading Definitions) to a student only if the following conditions are met:

(1) The recipient of the direct assistance is an individual who is a member of a special population (as defined in section 3(29) of the Act) and who is participating in a NHCTEP project.

(2) The direct assistance is needed to address barriers to the individual's successful participation in a NHCTEP project.

(3) The direct assistance is part of a broader, more generally focused program or activity for addressing the needs of an individual who is a member of a special population.

Note: Direct assistance to individuals who are members of special populations is not, by itself, a ''program or activity for special populations.''

(4) The grant funds used for direct assistance must be expended to supplement, and not supplant, assistance that is otherwise available from non-Federal sources. For example, generally, a community-based organization could not use NHCTEP funds to provide child care for single parents if non-Federal funds previously were made available for this purpose, or if non-Federal funds are used to provide child care services for single parents participating in non-career and technical education programs and these services otherwise (in the absence of NHCTEP funds) would have been available to career and technical education students.

(5) In determining how much of the NHCTEP grant funds it will use for direct assistance to an eligible student, a grantee—

(i) May only provide assistance to the extent that it is needed to address barriers to the individual's successful participation in career and technical education; and

(ii) Considers whether the specific services to be provided are a reasonable and necessary cost of providing career and technical education programs for special populations. However, the Secretary does not envision a circumstance in which it would be a reasonable and necessary expenditure of NHCTEP project funds for a grantee to utilize a majority of a project's budget to pay direct assistance to students, in lieu of providing the students served by the project with career and technical education.

(d) *Career and technical education agreement.* Any applicant that is not proposing to provide career and technical education directly to Native Hawaiian students and proposes instead to pay one or more qualified educational entities to provide such career and technical education to Native Hawaiian

students must include with its application a written career and technical education agreement between the applicant and the educational entity. The written agreement must describe the commitment between the applicant and the educational entity and must include, at a minimum, a statement of the responsibilities of the applicant and the entity. The agreement must be signed by the appropriate individuals on behalf of each party, such as the authorizing official or administrative head of the applicant Native Hawaiian community-based organization.

(e) *Supplement-Not-Supplant.* Grantees may not use funds under NHCTEP to replace otherwise available non-Federal funding for ''direct assistance to students'' (as defined elsewhere in this notice under the heading *Definitions*) and family assistance programs. For example, NHCTEP funds must not be used to supplant non-Federal funds to pay the costs of students' tuition, dependent care, transportation, books, supplies, and other costs associated with participation in a career and technical education program.

Further, funds under NHCTEP may not be used to replace Federal student financial aid. The Act does not authorize the Secretary to fund projects that serve primarily as entities through which students may apply for and receive tuition and other financial assistance.

Evaluation Requirements:

To help ensure the high quality of NHCTEP projects and the achievement of the goals and purposes of section 116(h) of the Act, each grantee must budget for and conduct an ongoing evaluation of the effectiveness of its project. An independent evaluator must conduct the evaluation. The evaluation must—

(a) Be appropriate for the project and be both formative and summative in nature; and

(b) Include—

(1) Collection and reporting of the performance measures for NHCTEP that are identified in the *Performance Measures* section of this notice; and

(2) Qualitative and quantifiable data with respect to—

(i) Academic and career and technical competencies demonstrated by the participants and the number and kinds of academic and work credentials acquired by individuals, including their participation in programs providing skill proficiency assessments, industry certifications, or training at the associate degree level that is articulated with an advanced degree option;

(ii) Enrollment, completion, and placement of participants by gender, for each occupation for which training was provided;

(iii) Job or work skill attainment or enhancement, including participation in apprenticeship and work-based learning programs, and student progress in achieving technical skill proficiencies necessary to obtain employment in the field for which the student has been prepared, including attainment or enhancement of technical skills in the industry the student is preparing to enter;

(iv) Activities, during the formative stages of the project, to help guide and improve the project, as well as a summative evaluation that includes recommendations for disseminating information on project activities and results;

(v) The number and percentage of students who obtained industry-recognized credentials, certificates, or degrees;

(vi) The outcomes of students' technical assessments, by type and scores, if available;

(vii) The rates of attainment of a proficiency credential or certificate, in conjunction with a secondary school diploma;

(viii) The effectiveness of the project, including a comparison between the intended and observed results and a demonstration of a clear link between the observed results and the specific treatment given to project participants;

(ix) The extent to which information about or resulting from the project was disseminated at other sites, such as through the grantee's development and use of guides or manuals that provide step-by-step directions for practitioners to follow when initiating similar efforts; and

(x) The impact of the project, *e.g.*, follow-up data on students' employment, sustained employment, promotions, further and continuing education or training, or the impact the project had on Native Hawaiian economic development or career and technical education activities.

Performance Measures: The Assistant Secretary establishes the following core factors and measures for evaluating the overall effectiveness of the NHCTEP and projects supported under this program.

(a) *Number of Secondary, Postsecondary, and Adult Projects.* The number of secondary, postsecondary, and adult programs that—

(1) Apply industry-recognized skill standards so that students can earn skill certificates in those projects; and

(2) Offer skill competencies, related assessments, and industry-recognized skill certificates in an area of study offered by secondary and postsecondary institutions.

(b) *Secondary Projects.* The percentage of participating secondary career and technical education students who—

(1) Meet or exceed State proficiency standards in reading/language arts and mathematics;

(2) Attain a secondary school diploma or its State-recognized equivalent, or a proficiency credential in conjunction with a secondary school diploma;

(3) Attain career and technical education skill proficiencies aligned with industry-recognized standards; and

(4) Are placed in postsecondary education, advanced training, military service, or employment in high-skill, high-wage, and high-demand occupations or in current or emerging occupations.

(c) *Postsecondary Projects.*

The percentage of participating postsecondary students in career and technical education programs who—

(1) Receive postsecondary degrees, certificates, or credentials;

(2) Attain career and technical education skill proficiencies aligned with industry-recognized standards;

(3) Receive industry-recognized credentials, certificates, or degrees;

(4) Are retained in postsecondary education or transfer to a baccalaureate degree program; and

(5) Are placed in military service or apprenticeship programs, or are placed in employment, receive an employment promotion, or retain employment.

(d) *Adult Projects.* The percentage of participating adult career and technical education students who—

(1) Enroll in a postsecondary education or training program;

(2) Attain career and technical education skill proficiencies aligned with industry-recognized standards;

(3) Receive industry-recognized credentials, certificates, or degrees; and

(4) Are placed in employment, receive an employment promotion, or retain employment.

Note: All grantees must submit an annual performance report addressing these performance measures, to the extent feasible and to the extent that they apply to each grantee's NHCTEP project.

Additional Statutory Requirement:

Limitation on services. Section 315 of the Act prohibits the use of funds received under the Act to provide career and technical education programs to students prior to the seventh grade, except that equipment and facilities purchased with funds under the Act may be used by such students. (20 U.S.C. 2395)

Definitions: The following definitions govern this program. The definitions of the terms *acute economic need, coherent sequence of courses, direct assistance to students,* and *stipend* are from the notice of final requirements, definitions, and selection criteria published elsewhere in this issue of the **Federal Register**. The definitions of the remaining terms are from section 3 of the Act (20 U.S.C. 2303).

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the U.S. Department of Commerce or the U.S. Department of Health and Human Services Poverty Guidelines.

Career and technical education means organized educational activities that—

(a) Offer a sequence of courses that—

(1) Provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions;

(2) Provides technical skills proficiency, an industry-recognized credential, a certificate, or an associate degree; and

(3) May include prerequisite courses (other than remedial courses) that meet the requirements of this definition; and

(b) Include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, and knowledge of all aspects of an industry, including entrepreneurship, of an individual. (20 U.S.C. 2302(5))

Coherent sequence of courses means a series of courses in which career and academic education are integrated, and that directly relates to, and leads to, both academic and occupational competencies. The term includes competency-based education and academic education, and adult training or retraining, including sequential units encompassed within a single adult retraining course that otherwise meets the requirements of this definition.

Direct assistance to students means tuition, dependent care, transportation, books, and supplies that are necessary for a student to participate in a project funded under this program.

Individual with a disability means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)). (20 U.S.C. 2302(17))

Individual with limited English proficiency means a secondary school student, an adult, or an out-of-school youth, who has limited ability in speaking, reading, writing, or understanding the English language, and—

(a) Whose native language is a language other than English; or

(b) Who lives in a family or community environment in which a language other than English is the dominant language. (20 U.S.C. 2302(16))

Native Hawaiian means any individual any of whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii. (20 U.S.C. 2326(a)(4))

Non-traditional fields means occupations or fields of work, including careers in computer science, technology, and other current and emerging high-skill occupations, for which individuals from one gender comprise less than 25 percent of the individuals employed in each such occupation or field of work. (20 U.S.C. 2302(20))

Special populations means—

(a) Individuals with disabilities;

(b) Individuals from economically disadvantaged families, including foster children;

(c) Individuals preparing for non-traditional fields;

(d) Single parents, including single pregnant women;

(e) Displaced homemakers; and

(f) Individuals with limited English proficiency. (20 U.S.C. 2302(29))

Stipend means a subsistence allowance—

(a) For a student who is enrolled in a career and technical education program funded under the NHCTEP;

(b) For a student who has an acute economic need that cannot be met through work-study programs; and

(c) That is necessary for the student to participate in a project funded under this program.

Support services means services related to curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices. (20 U.S.C. 2302(31))

Program Authority: 20 U.S.C. 2326(a)–(h).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final requirements, definitions, and selection criteria published elsewhere in this issue of the **Federal Register**.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,898,270 is available for the NHCTEP from the FY 2008 appropriation. Funding for the second and third years is subject to the availability of funds and to a grantee meeting the requirements of 34 CFR 75.253. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000—$500,000.

Estimated Average Size of Awards: $289,827.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. Eligible Applicants

(a) Community-based organizations primarily serving and representing Native Hawaiians. For purposes of the NHCTEP, a community-based organization means a public or private organization that provides career and technical education, or related services, to individuals in the Native Hawaiian community.

(b) Any community-based organization may apply individually or as a part of a consortium with one or more eligible community-based organizations. (34 CFR 75.127)

2. a. *Cost Sharing or Matching:* This program does not involve cost sharing or matching requirements, but does involve supplement-not-supplant funding provisions. (See the *Supplement-Not-Supplant* section of this notice.)

b. *Supplement-Not-Supplant:* In accordance with section 311(a) of the Act, funds under this program may not be used to supplant non-Federal funds used to carry out career and technical education activities and tech prep program activities. Furthermore, the prohibition against supplanting also means that grantees are required to use their negotiated restricted indirect cost rates under this program. (34 CFR 75.563)

The Secretary cautions applicants not to plan to use funds under NHCTEP to replace otherwise available non-Federal funding for ''direct assistance to students,'' (as defined elsewhere in this notice) and family assistance programs. For example, NHCTEP funds must not be used to supplant non-Federal funds to pay the costs of students' tuition, dependent care, transportation, books, supplies, and other costs associated with participation in a career and technical education program.

Further, funds under NHCTEP may not be used to replace Federal student financial aid. The Secretary wishes to highlight that the Act does not authorize the Secretary to fund projects that serve primarily as entities through which students may apply for and receive tuition and other financial assistance.

IV. Application and Submission Information

1. *Address to Request Application Package:* Nancy Essey, U.S. Department of Education, 400 Maryland Avenue, SW., room 11070, Potomac Center Plaza (PCP), Washington, DC 20202–7241. Telephone: (202) 245–7789. Fax: (202) 245–7170 or by e-mail: *nancy.essey@ed.gov.*

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

You can also obtain an application package via the Internet from the following address: *http://www.grants.gov/.*

Individuals with disabilities can obtain a copy the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. Content and Form of Application Submission:

Requirements concerning the content of an application, together with the forms you must submit are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letters of support, or documentation of the applicant's eligibility. However, the page limit does apply to all of the application narrative section [Part III].

Our reviewers will not read any pages of your application that exceed the page limit.

3. Submission Dates and Times:

Applications Available: March 24, 2009.

Deadline for Transmittal of Applications: April 23, 2009.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restriction in the *Applicable Regulations* section of this notice.

6. Other Submission Requirements:

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the NHCTEP, CFDA number 84.259A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the NHCTEP at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.259, not 84.259A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- 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 do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to

ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Nancy Essey, U.S. Department of Education, 400 Maryland Avenue, SW., room 11070, PCP, Washington, 20202–7241. FAX: (202) 245–7170.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.259A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.259A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from the notice of final requirements, definitions, and selection criteria published elsewhere in this issue of the **Federal Register** and are as follows:

(a) *Quality of the project design.* (35 points) In determining the quality of the design of the proposed project, we consider the following factors:

(1) The extent to which the design of the proposed project is appropriate to and will successfully address the needs of the target population or other identified needs (as evidenced by such data as local labor market demand, occupational trends, and surveys). (5 points)

(2) The extent to which goals, objectives, and outcomes are clearly specified and measurable. (For example, we look for clear descriptions of proposed student career and technical education activities; recruitment and retention strategies; expected student enrollments, completions, and placements in jobs, military specialties, and continuing education/training opportunities; the number of teachers, counselors, and administrators to be trained; and identification of requirements for each program of study to be provided under the project, including related training areas and a description of performance outcomes.) (10 points)

(3) The extent to which the proposed project will establish linkages with other appropriate agencies (e.g., community, State, and other Federal resources) and organizations providing services to the target population in order to improve services to students and strengthen outcomes for the proposed project. (5 points)

(4) The extent to which the services to be provided by the proposed project will create and offer activities that focus on enabling participants to obtain the skills necessary to gain employment in high-skill, high-wage, and high-demand occupations in emerging fields or in a specific career field. (5 points)

(5) The extent to which the services to be provided by the proposed project will create opportunities for students to acquire skills identified by the State at the secondary level or by industry-recognized career and technical education programs for licensure, degree, certification, or as required by a career or profession. (5 points)

(6) The extent to which the proposed project will provide opportunities for high-quality training or professional development services that—

(i) Are of sufficient quality, intensity, and duration to lead to improvements in practice among instructional personnel;

(ii) Will improve and increase instructional personnel's knowledge and skills to help students meet challenging and rigorous academic and career and technical skill proficiencies;

(iii) Will advance instructional personnel's understanding of effective instructional strategies that are supported by scientifically based research; and

(iv) Include professional development plans that clearly address ways in which learning gaps will be addressed and how continuous review of performance will be conducted to identify training needs. (5 points)

(b) *Quality of the management plan.* (15 points) In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and the milestones and performance standards for accomplishing project tasks. (5 points)

(2) The extent to which the time commitments of the project director and other key project personnel, including instructors, are appropriate and adequate to meet the objectives of the proposed project. (5 points)

(3) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (5 points)

(c) *Quality of data collection plan.* (10 points) In determining the quality of the data collection plan, we consider the following factors:

(1) The adequacy of procedures and methods for collecting data. (5 points)

(2) The adequacy of the data collection plan in allowing comparison with other similar secondary, postsecondary, and adult career and technical education programs. (5 points)

(d) *Quality of project personnel.* (25 points) In determining the quality of project personnel, we consider the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (5 points)

(2) The qualifications, including relevant training, expertise, and experience, of the project director. (5 points)

(3) The qualifications, including relevant training, expertise, and experience, of key project personnel, especially the extent to which the project will use instructors who are certified to teach in the field in which they will provide instruction. (10 points)

(4) The qualifications, including training, expertise, and experience, of project consultants. (5 points)

(e) *Adequacy of resources.* (15 points) In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization(s) and the entities to be served, including the evidence and relevance of commitments (e.g., articulation agreements, memoranda of understanding, letters of

support, or commitments to employ project participants) of the applicant, local employers, or entities to be served by the project. (5 points)

(2) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project. (5 points)

(3) The potential for continued support of the project after Federal funding ends. (5 points)

(f) *Quality of the project evaluation.* (20 points) In determining the quality of the evaluation, we consider the following factors:

(1) The extent to which the methods of evaluation proposed by the grantee are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (5 points)

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and the performance measures discussed elsewhere in this notice and will produce quantitative and qualitative data, to the extent possible. (5 points)

(3) The extent to which the methods of evaluation will provide performance feedback and continuous improvement toward achieving intended outcomes. (5 points)

(4) The quality of the proposed evaluation to be conducted by an external evaluator with the necessary background and technical expertise to carry out the evaluation. (5 points)

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), Federal departments and agencies must clearly describe the goals and objectives of their programs, identify resources and actions needed to accomplish these goals and objectives, develop a means of measuring progress made, and regularly report on their achievement. One important source of program information on successes and lessons learned is the project evaluation conducted under individual grants.

The Department has established the following core factors and measures for evaluating the overall effectiveness of the NHCTEP and projects supported under this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these core factors and measures.

(a) *Number of Secondary, Postsecondary, and Adult Projects.* The number of secondary, postsecondary, and adult programs that—

(1) Apply industry-recognized skill standards so that students can earn skill certificates in those projects; and

(2) Offer skill competencies, related assessments, and industry-recognized skill certificates in an area of study offered by secondary and postsecondary institutions.

(b) *Secondary Projects.* The percentage of participating secondary career and technical education students who—

(1) Meet or exceed State proficiency standards in reading/language arts and mathematics;

(2) Attain a secondary school diploma or its State-recognized equivalent, or a proficiency credential in conjunction with a secondary school diploma;

(3) Attain career and technical education skill proficiencies aligned with industry-recognized standards; and

(4) Are placed in postsecondary education, advanced training, military service, or employment in high-skill, high-wage, and high-demand occupations or in current or emerging occupations.

(c) *Postsecondary Projects.*

The percentage of participating postsecondary students in career and technical education programs who—

(1) Receive postsecondary degrees, certificates, or credentials;

(2) Attain career and technical education skill proficiencies aligned with industry-recognized standards;

(3) Receive industry-recognized credentials, certificates, or degrees;

(4) Are retained in postsecondary education or transfer to a baccalaureate degree program; and

(5) Are placed in military service or apprenticeship programs, or are placed in employment, receive an employment promotion, or retain employment.

(d) *Adult Projects.* The percentage of participating adult career and technical education students who—

(1) Enroll in a postsecondary education or training program;

(2) Attain career and technical education skill proficiencies aligned with industry-recognized standards;

(3) Receive industry-recognized credentials, certificates, or degrees; and

(4) Are placed in employment, receive an employment promotion, or retain employment.

Note: All grantees must submit an annual performance report addressing these performance measures, to the extent feasible and to the extent that they apply to each grantee's NHCTEP project.

VII. Agency Contact

For Further Information Contact: Nancy Essey, U.S. Department of Education, 400 Maryland Avenue, SW., room 11070, PCP, Washington, DC 20202–7241. Telephone: (202) 245–7789, or by e-mail: *nancy.essey@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this notice and a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Informaiton Contact* in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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

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: *www.gpoaccess.gov/nara/index.html.*

Dated: March 19, 2009.

Dennis L. Berry,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. E9–6444 Filed 3–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Native Hawaiian Career and Technical Education Program (NHCTEP); Catalog of Federal Domestic Assistance (CFDA) Number: 84.259A

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of final requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Vocational and Adult Education establishes requirements, definitions, and selection criteria under the Native Hawaiian Career and Technical Education Program (NHCTEP). The Assistant Secretary may use these requirements, definitions, and selection criteria in competitions in fiscal year (FY) 2009 and later years.

Effective Date: These requirements, definitions, and selection criteria are effective April 23, 2009.

FOR FURTHER INFORMATION CONTACT: Nancy Essey, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11070, Potomac Center Plaza (PCP), Washington, DC 20202–7241. Telephone: (202) 245–7789 or by e-mail: *nancy.essey@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Purpose of Program: The Native Hawaiian Career and Technical Education Program provides grants to eligible applicants to plan, conduct, and administer programs, or portions of programs, that are authorized by and consistent with the purposes of section 116 of the Carl D. Perkins Career and Technical Education Act of 2006 (Act) for the benefit of Native Hawaiians.

Program Authority: 20 U.S.C. 2326(a)–(h).

We published a notice of proposed requirements, definitions, and selection criteria for this program in the **Federal Register** on January 23, 2009 (74 FR 4155). That notice contained background information and our reasons for proposing the particular requirements, definitions, and selection criteria. We are not repeating that information in this notice.

There are no differences between the proposed requirements, definitions, and selection criteria we published on January 23, 2009 and these final requirements, definitions, and selection criteria.

Public Comment: In response to our invitation in the notice of proposed requirements, definitions, and selection criteria, we did not receive any comments on the proposed requirements, definitions, and selection criteria.

Final Requirements: Consistent with the Act, the Assistant Secretary establishes the following requirements for this program. We may apply these requirements in any year in which this program is in effect.

I. Authorized Programs, Services, and Activities

(a) *Authorized Programs.* In accordance with section 116(e) of the Act, under this program, NHCTEP projects must—

(1) Develop new programs, services, or activities or improve or expand existing programs, services, or activities that are consistent with the purposes of the Act. In other words, the Department will support ''expansions'' or ''improvements'' that include, but are not necessarily limited to, the expansion of effective programs or practices; upgrading of activities, equipment, or materials; increasing staff capacity; adoption of new technology; modification of curriculum; or implementation of new policies to improve program effectiveness and outcomes; and

(2) Fund a career and technical education program, service, or activity that—

(i) Is a new program, service, or activity that was not provided by the applicant during the instructional term (a defined period, such as a semester, trimester, or quarter, within the academic year) that preceded the request for funding under NHCTEP;

(ii) Will improve or expand an existing career and technical education program; or

(iii) Inherently improves career and technical education. A program, service, or activity ''inherently improves career and technical education'' if it—

(A) Develops new career and technical education programs of study for approval by the appropriate accreditation agency;

(B) Strengthens the rigor of the academic and career and technical components of funded programs;

(C) Uses curriculum that is aligned with industry-recognized standards and will result in students attaining industry-recognized credentials, certificates, or degrees;

(D) Integrates academics (other than remedial courses) with career and technical education programs through a coherent sequence of courses to help ensure learning in the core academic and career and technical subjects;

(E) Links career and technical education at the secondary level with career and technical education at the postsecondary level, and facilitates students' pursuit of a baccalaureate degree;

(F) Expands the scope, depth, and relevance of curriculum, especially content that provides students with a comprehensive understanding of all aspects of an industry and a variety of hands-on, job-specific experiences; or

(G) Offers—

(*1*) Work-related experience, internships, cooperative education, school-based enterprises, studies in entrepreneurship, community service learning, and job shadowing that are related to career and technical education programs;

(*2*) Coaching/mentoring, support services, and extra help for students after school, on the weekends, or during the summer so they can meet higher standards;

(*3*) Career guidance and academic counseling for students participating in career and technical education programs under NHCTEP;

(*4*) Placement services for students who have successfully completed career and technical education programs and attained a technical skill proficiency that is aligned with industry-recognized standards;

(*5*) Professional development programs for teachers, counselors, and administrators;

(*6*) Strong partnerships among grantees and local educational agencies, postsecondary institutions, community leaders, adult education providers, and, as appropriate, other entities, such as employers, labor organizations, parents, and local partnerships, to enable students to achieve State academic standards and attain career and technical skills;

(*7*) The use of student assessment and evaluation data to improve continually instruction and staff development; or

(*8*) Research, development, demonstration, dissemination,

evaluation and assessment, capacity-building, and technical assistance related to career and technical education programs.

(b) *Student stipends.*

(1) A portion of an award under this program may be used to provide stipends (as defined elsewhere in this notice under the heading *Definitions*) to help students meet the costs of participation in a NHCTEP project.

(2) To be eligible for a stipend a student must—

(i) Be enrolled in a career and technical education project funded under this program;

(ii) Be in regular attendance in a NHCTEP project and meet the training institution's attendance requirement;

(iii) Maintain satisfactory progress in his or her program of study according to the training institution's published standards for satisfactory progress; and

(iv) Have an acute economic need that—

(A) Prevents participation in a project funded under this program without a stipend; and

(B) Cannot be met through a work-study program.

(3) The amount of a stipend is the greater of either the minimum hourly wage prescribed by State or local law, or the minimum hourly wage established under the Fair Labor Standards Act.

(4) A grantee may award a stipend only if the stipend combined with other resources the student receives does not exceed the student's financial need. A student's financial need is the difference between the student's cost of attendance and the financial aid or other resources available to defray the student's cost of attending a NHCTEP project.

(5) To calculate the amount of a student's stipend, a grantee must multiply the number of hours a student actually attends career and technical education instruction by the amount of the minimum hourly wage that is prescribed by State or local law or by the minimum hourly wage that is established under the Fair Labor Standards Act. The grantee must reduce the amount of a stipend if necessary to ensure that it does not exceed the student's financial need.

Example: If a grantee uses the Fair Labor Standards Act minimum hourly wage of $7.25 and a student attends classes for 20 hours a week, the student's stipend would be $145 for the week during which the student attends classes ($7.25 × 20 = $145). If the program lasts 16 weeks and the student's total financial need is $2,000, the grantee must reduce the weekly stipend to $125, because the total stipend for the course would otherwise exceed the student's financial need by $320 (or $20 a week).

Note: Grantees must maintain records that fully support their decisions to award stipends to students, as well as the amounts that are paid, such as proof of a student's enrollment in the NHCTEP project, stipend applications, timesheets showing the number of hours of student attendance that are confirmed in writing by an instructor, student financial status information, and evidence that a student could not participate in the NHCTEP project without a stipend. (*See generally* 20 U.S.C. 1232f; 34 CFR 75.700–75.702; 75.730; and 75.731.)

(6) An eligible student may earn a stipend when taking a course for the first time, although a stipend may not be provided to a student for a particular course if the student has already taken, completed, and had the opportunity to benefit from the course and is merely repeating the course.

(7) An applicant must include, in its application, the procedure it intends to use in determining student eligibility for stipends and stipend amounts, and its oversight procedures for the awarding and payment of stipends.

(c) *Direct Assistance to Students.* A grantee may provide direct assistance (as defined elsewhere in this notice under the heading *Definitions*) to a student only if the following conditions are met:

(1) The recipient of the direct assistance is an individual who is a member of a special population (as defined in section 3(29) of the Act) and who is participating in a NHCTEP project.

(2) The direct assistance is needed to address barriers to the individual's successful participation in a NHCTEP project.

(3) The direct assistance is part of a broader, more generally focused program or activity for addressing the needs of an individual who is a member of a special population.

Note: Direct assistance to individuals who are members of special populations is not, by itself, a ''program or activity for special populations.''

(4) The grant funds used for direct assistance must be expended to supplement, and not supplant, assistance that is otherwise available from non-Federal sources. For example, generally, a community-based organization could not use NHCTEP funds to provide child care for single parents if non-Federal funds previously were made available for this purpose, or if non-Federal funds are used to provide child care services for single parents participating in non-career and technical education programs and these services otherwise (in the absence of NHCTEP funds) would have been available to career and technical education students.

(5) In determining how much of the NHCTEP grant funds it will use for direct assistance to an eligible student, a grantee—

(i) May only provide assistance to the extent that it is needed to address barriers to the individual's successful participation in career and technical education; and

(ii) Considers whether the specific services to be provided are a reasonable and necessary cost of providing career and technical education programs for special populations. However, the Secretary does not envision a circumstance in which it would be a reasonable and necessary expenditure of NHCTEP project funds for a grantee to utilize a majority of a project's budget to pay direct assistance to students, in lieu of providing the students served by the project with career and technical education.

(d) *Career and Technical Education Agreement.* Any applicant that is not proposing to provide career and technical education directly to Native Hawaiian students and proposes instead to pay one or more qualified educational entities to provide such career and technical education to Native Hawaiian students must include with its application a written career and technical education agreement between the applicant and the educational entity. The written agreement must describe the commitment between the applicant and the educational entity and must include, at a minimum, a statement of the responsibilities of the applicant and the entity. The agreement must be signed by the appropriate individuals on behalf of each party, such as the authorizing official or administrative head of the applicant Native Hawaiian community-based organization.

(e) *Supplement-Not-Supplant.* Grantees may not use funds under NHCTEP to replace otherwise available non-Federal funding for ''direct assistance to students'' (as defined elsewhere in this notice under the heading *Definitions*) and family assistance programs. For example, NHCTEP funds must not be used to supplant non-Federal funds to pay the costs of students' tuition, dependent care, transportation, books, supplies, and other costs associated with participation in a career and technical education program.

Further, funds under NHCTEP may not be used to replace Federal student financial aid. The Act does not authorize the Secretary to fund projects that serve primarily as entities through which students may apply for and receive tuition and other financial assistance.

II. Evaluation Requirements

To help ensure the high quality of NHCTEP projects and the achievement of the goals and purposes of section 116(h) of the Act, each grantee must budget for and conduct an ongoing evaluation of the effectiveness of its project. An independent evaluator must conduct the evaluation. The evaluation must—

(a) Be appropriate for the project and be both formative and summative in nature; and

(b) Include—

(1) Collection and reporting of the performance measures for NHCTEP that are identified in the *Performance Measures* section of this notice; and

(2) Qualitative and quantitative data with respect to—

(i) Academic and career and technical competencies demonstrated by the participants and the number and kinds of academic and work credentials acquired by individuals, including their participation in programs providing skill proficiency assessments, industry certifications, or training at the associate degree level that is articulated with an advanced degree option;

(ii) Enrollment, completion, and placement of participants by gender, for each occupation for which training was provided;

(iii) Job or work skill attainment or enhancement, including participation in apprenticeship and work-based learning programs, and student progress in achieving technical skill proficiencies necessary to obtain employment in the field for which the student has been prepared, including attainment or enhancement of technical skills in the industry the student is preparing to enter;

(iv) Activities, during the formative stages of the project, to help guide and improve the project, as well as a summative evaluation that includes recommendations for disseminating information on project activities and results;

(v) The number and percentage of students who obtained industry-recognized credentials, certificates, or degrees;

(vi) The outcomes of students' technical assessments, by type and scores, if available;

(vii) The rates of attainment of a proficiency credential or certificate, in conjunction with a secondary school diploma;

(viii) The effectiveness of the project, including a comparison between the intended and observed results and a demonstration of a clear link between the observed results and the specific treatment given to project participants;

(ix) The extent to which information about or resulting from the project was disseminated at other sites, such as through the grantee's development and use of guides or manuals that provide step-by-step directions for practitioners to follow when initiating similar efforts; and

(x) The impact of the project, *e.g.*, follow-up data on students' employment, sustained employment, promotions, further and continuing education or training, or the impact the project had on Native Hawaiian economic development or career and technical education activities.

III. Performance Measures

The Assistant Secretary establishes the following core factors and measures for evaluating the overall effectiveness of the NHCTEP and projects supported under this program.

(a) *Number of Secondary, Postsecondary, and Adult Projects.* The number of secondary, postsecondary, and adult programs that—

(1) Apply industry-recognized skill standards so that students can earn skill certificates in those projects; and

(2) Offer skill competencies, related assessments, and industry-recognized skill certificates in an area of study offered by secondary and postsecondary institutions.

(b) *Secondary Projects.* The percentage of participating secondary career and technical education students who—

(1) Meet or exceed State proficiency standards in reading/language arts and mathematics;

(2) Attain a secondary school diploma or its State-recognized equivalent, or a proficiency credential in conjunction with a secondary school diploma;

(3) Attain career and technical education skill proficiencies aligned with industry-recognized standards; and

(4) Are placed in postsecondary education, advanced training, military service, or employment in high-skill, high-wage, and high-demand occupations or in current or emerging occupations.

(c) *Postsecondary Projects.* The percentage of participating postsecondary students in career and technical education programs who—

(1) Receive postsecondary degrees, certificates, or credentials;

(2) Attain career and technical education skill proficiencies aligned with industry-recognized standards;

(3) Receive industry-recognized credentials, certificates, or degrees;

(4) Are retained in postsecondary education or transfer to a baccalaureate degree program; and

(5) Are placed in military service or apprenticeship programs, or are placed in employment, receive an employment promotion, or retain employment.

(d) *Adult Projects.* The percentage of participating adult career and technical education students who—

(1) Enroll in a postsecondary education or training program;

(2) Attain career and technical education skill proficiencies aligned with industry-recognized standards;

(3) Receive industry-recognized credentials, certificates, or degrees; and

(4) Are placed in employment, receive an employment promotion, or retain employment.

Note: All grantees must submit an annual performance report addressing these performance measures, to the extent feasible and to the extent that they apply to each grantee's NHCTEP project.

Final Definitions

The Assistant Secretary establishes the following definitions for NHCTEP program terms not defined in the Act. We may apply these definitions in any year in which this program is in effect.

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the U.S. Department of Commerce or the U.S. Department of Health and Human Services Poverty Guidelines.

Coherent sequence of courses means a series of courses in which career and academic education is integrated, and that directly relates to, and leads to, both academic and occupational competencies. The term includes competency-based education and academic education, and adult training or retraining, including sequential units encompassed within a single adult retraining course that otherwise meets the requirements of this definition.

Direct assistance to students means tuition, dependent care, transportation, books, and supplies that are necessary for a student to participate in a project funded under this program.

Stipend means a subsistence allowance—

(a) For a student who is enrolled in a career and technical education program funded under the NHCTEP;

(b) For a student who has an acute economic need that cannot be met through work-study programs; and

(c) That is necessary for the student to participate in a project funded under this program.

Final Selection Criteria

The Assistant Secretary establishes the following selection criteria for evaluating an application under this

program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications or the application package, or both, we will announce the maximum possible points assigned to each criterion.

(a) *Quality of the Project Design.* In determining the quality of the design of the proposed project, we consider the following factors:

(1) The extent to which the design of the proposed project is appropriate to and will successfully address the needs of the target population or other identified needs (as evidenced by such data as local labor market demand, occupational trends, and surveys).

(2) The extent to which goals, objectives, and outcomes are clearly specified and measurable. (For example, we look for clear descriptions of proposed student career and technical education activities; recruitment and retention strategies; expected student enrollments, completions, and placements in jobs, military specialties, and continuing education/training opportunities; the number of teachers, counselors, and administrators to be trained; and identification of requirements for each program of study to be provided under the project, including related training areas and a description of performance outcomes.)

(3) The extent to which the proposed project will establish linkages with other appropriate agencies (*e.g.*, community, State, and other Federal resources) and organizations providing services to the target population in order to improve services to students and strengthen outcomes for the proposed project.

(4) The extent to which the services to be provided by the proposed project will create and offer activities that focus on enabling participants to obtain the skills necessary to gain employment in high-skill, high-wage, and high-demand occupations in emerging fields or in a specific career field.

(5) The extent to which the services to be provided by the proposed project will create opportunities for students to acquire skills identified by the State at the secondary level or by industry-recognized career and technical education programs for licensure, degree, certification, or as required by a career or profession.

(6) The extent to which the proposed project will provide opportunities for high-quality training or professional development services that—

(i) Are of sufficient quality, intensity, and duration to lead to improvements in practice among instructional personnel;

(ii) Will improve and increase instructional personnel's knowledge and skills to help students meet challenging and rigorous academic and career and technical skill proficiencies;

(iii) Will advance instructional personnel's understanding of effective instructional strategies that are supported by scientifically based research; and

(iv) Include professional development plans that clearly address ways in which learning gaps will be addressed and how continuous review of performance will be conducted to identify training needs.

(b) *Quality of the Management Plan.* In determining the quality of the management plan for the proposed project, we consider the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and the milestones and performance standards for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and other key project personnel, including instructors, are appropriate and adequate to meet the objectives of the proposed project.

(3) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(c) *Quality of Data Collection Plan.* In determining the quality of the data collection plan, we consider the following factors:

(1) The adequacy of procedures and methods for collecting data.

(2) The adequacy of the data collection plan in allowing comparison with other similar secondary, postsecondary, and adult career and technical education programs.

(d) *Quality of Project Personnel.* In determining the quality of project personnel, we consider the following factors:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) The qualifications, including relevant training, expertise, and experience, of the project director.

(3) The qualifications, including relevant training, expertise, and experience, of key project personnel, especially the extent to which the project will use instructors who are certified to teach in the field in which they will provide instruction.

(4) The qualifications, including training, expertise, and experience, of project consultants.

(e) *Adequacy of Resources.* In determining the adequacy of resources for the proposed project, we consider the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization(s) and the entities to be served, including the evidence and relevance of commitments (*e.g.*, articulation agreements, memoranda of understanding, letters of support, or commitments to employ project participants) of the applicant, local employers, or entities to be served by the project.

(2) The extent to which the budget is adequate and costs are reasonable in relation to the objectives and design of the proposed project.

(3) The potential for continued support of the project after Federal funding ends.

(f) *Quality of the Project Evaluation.* In determining the quality of the evaluation, we consider the following factors:

(1) The extent to which the methods of evaluation proposed by the grantee are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and the performance measures discussed elsewhere in this notice and will produce quantitative and qualitative data, to the extent possible.

(3) The extent to which the methods of evaluation will provide performance feedback and continuous improvement toward achieving intended outcomes.

(4) The quality of the proposed evaluation to be conducted by an external evaluator with the necessary background and technical expertise to carry out the evaluation.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria for future competitions, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with

Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final requirements, definitions, and selection criteria justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

We fully discussed the costs and benefits of this regulatory action in the notice of proposed requirements, definitions and selection criteria.

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

Electronic Access to this Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/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.*

Dated: March 19, 2009.

Dennis L. Berry,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. E9–6441 Filed 3–23–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Evaluation of Moving High-Performing Teachers to Low-Performing Schools

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled ''Evaluation of Moving High-Performing Teachers to Low-Performing Schools'' (18–13–21). The National Center for Education Evaluation and Regional Assistance at the Department's Institute of Education Sciences (IES) commissioned this evaluation. It will be conducted under a contract that IES awarded in September 2007.

The central research question that the study will address is: What impacts on student achievement do high-performing teachers have when they are placed in low-performing schools?

The system will contain elementary and middle school student records and teacher information for approximately 10 school districts.

The evaluation will target 10 school districts where linked student-teacher school records, including test score data, are available for the last four years for all enrolled students. The system of records will include elementary and middle school student test score records, student demographic data, and their teachers' demographic data and teaching experience. Across the 10 school districts, data will be collected on approximately 200 teachers and 3680 students in their classrooms.

The system of records will include personally identifying information about the students in the participating teacher classrooms, including demographic information such as race, ethnicity, gender, age, and educational background; and scores on State reading and mathematics achievement tests. The system of records will also include personally identifying information about teachers participating in the evaluation, including demographic information such as race, ethnicity, gender, and educational background; and teaching experience.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records referenced in this notice on or before April 23, 2009.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 19, 2009. This system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on April 28, 2009 or (2) April 23, 2009, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses to Dr. Audrey Pendleton, Acting Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502D, Washington, DC 20208–0001. Telephone: (202) 208–7078. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov.*

You must include the term ''Evaluation of Moving High-Performing Teachers to Low-Performing Schools'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice at the U.S. Department of Education in Room 502D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record:

On request, we supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Audrey Pendleton. Telephone: (202) 208–7078. 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 paragraph.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to information about individuals that contains individually identifying information and that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.''

The Privacy Act requires each agency to publish a notice of a system of records in the **Federal Register** and to prepare and send a report to OMB whenever the agency publishes a new system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform. These reports are inc1uded to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

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Dated: March 19, 2009.

Sue Betka,

Acting Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education, publishes a notice of a new system of records to read as follows:

18–13–21

SYSTEM NAME:

Evaluation of Moving High-Performing Teachers to Low-Performing Schools.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences (IES), U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502E, Washington, DC 20208–0001.

(2) Mathematica Policy Research, Inc., 600 Maryland Avenue, SW., Suite 550, Washington, DC 20024–2512 (contractor).

(3) Optimal Solutions Group, 8100 Professional Place, Suite 312, Hyattsville, MD 20785–2229 (subcontractor).

(4) The New Teacher Project, 186 Joralemon Street, Suite 300, Brooklyn, NY 11201–4326 (subcontractor).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on elementary and middle school students and teachers in approximately 10 school districts participating in an evaluation of the impact on improving student achievement of placing high-performing teachers in low-performing schools. In these 10 school districts, data will be collected on approximately 200 teachers and 3680 students in their classrooms.

CATEGORIES OF RECORDS IN THE SYSTEM:

The evaluation will contain information about 10 school districts where linked student-teacher school records, including test score data, are available for the last four years for all enrolled students. The system of records will include personally identifying information about elementary and middle school students participating in the evaluation, including demographic information such as race, ethnicity, gender, age, educational background, English language proficiency, disability status, eligibility for school lunch programs and mobility status; and scores on State reading and mathematics achievement tests. The system of records will also include personally identifying information about teachers participating in the evaluation, including demographic information such as race, ethnicity, and educational background; and teaching experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The evaluation is authorized under: (1) Sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563); and (2) section 9601(a) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB) (20 U.S.C. 7941(a)). The grant programs that are the subject of this evaluation are authorized under Part A of Title II of the ESEA, as amended by the NCLB (20 U.S.C. 6601–51).

PURPOSE(S):

The central purpose and reason why the Department is establishing this system of records is to evaluate the impact on improving student achievement of high-performing teachers who are placed in low-performing schools. We seek to study the following additional research questions that are important for policymaking:

(1) What is the overlap between high-performing teachers and low-performing schools? In other words, how serious is the unequal distribution of teacher talent?

(2) How responsive to incentives are high-performing teachers?

(3) What factors influence career decisions of high-performing teachers?

(4) Who fills teaching vacancies in low-performing schools in the absence of incentives for high-performing teachers to move to low-performing schools?

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement. Any disclosure of individually identifying information from a record in this system must also comply with the requirements of section

183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting, and publication of data by IES.

Contract Disclosure. If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records on CD-ROM, and the contractor (Mathematica Policy Research, Inc.) and subcontractors (Optimal Solutions Group and the New Teacher Project) maintain data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed and retrieved by a number assigned to each individual that is cross-referenced by the individual's name on a separate list.

SAFEGUARDS:

All physical access to the Department's site and to the sites of the Department's contractor and subcontractors, where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a need-to-know basis, and controls individual users' ability to access and alter records within the system. The contractor and subcontractors will establish similar sets of procedures at their sites to ensure confidentiality of data. Their systems are required to ensure that information identifying individuals is in files physically separated from other research data. The contractor and subcontractors will maintain security of the complete set of all master data files and documentation. Access to individually identifying data will be strictly controlled. At each site all data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. Security features that protect project data include: Password-protected accounts that authorize users to use the contractor's and subcontractors' systems but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; and additional security features that the network administrators will establish for projects as needed. The contractor's and subcontractors' employees who ''maintain'' (collect, maintain, use, or disseminate) data in this system shall comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules (ED/RDS, Part 3, Item 2b and Part 3, Item 5a).

SYSTEM MANAGER AND ADDRESS:

Acting Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502E, Washington, DC 20208.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

This system contains records on elementary and middle school students and teachers in school districts participating in an evaluation of the impact on student achievement of high-performing teachers who are placed in low-performing schools. Districts have databases (school records) that contain all the student information that the Department will use. As part of the evaluation, a district is providing the Department's contractor with data files that contain the information on each student assigned to a teacher participating in the evaluation. Data collected from teachers will be collected from surveys that they fill out.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–6445 Filed 3–23–09; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The proposed Industrial Labor Relations Collection will request information from the Department of Energy Facilities Management Contractors for contract administration, management oversight and cost control. The information collection will assist the Department in evaluating the implementation of the contractors' work force restructuring plans and apprise the Department of significant labor-management developments at DOE contractor sites. This information will be used to ensure that Department contractors recruit and retain a workforce in accordance with the terms of their contract and in compliance with statutory and regulatory requirements as identified by contract.

DATES: Comments regarding this collection must be received on or before April 23, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

And to: Karl E. Stoeckle, Business Management Specialist, LM–10.1, U.S. Department of Energy, 1000 Independence Avenue, SW.,

Washington, DC 20585. or by fax at 202–586–1540 or by e-mail to *karl.stoeckle@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Karl E. Stoeckle, Business Management Specialist, LM–10.1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. or by fax at 202–586–1540 or by e-mail to *karl.stoeckle@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. New; (2) Information Collection Request Title: Legacy Management Labor Relations; (3) Type of Request: New collection; (4) Purpose: The proposed collection will request wage and benefits information from the Department of Energy Facilities Management Contractors for use in contract administration, management oversight and cost control. This information will be used to ensure that Department contractors recruit and retain a workforce in accordance with the terms of their contract and in compliance with statutory and regulatory requirements as identified by contract. (5) Type of Respondents: Facility Management Contractors; (6) Estimated Number of Respondents: 35 annually; (7) Estimated Number of Burden Hours: 5.5 per respondent for total of 193 annually.

Statutory Authority: The statutory authority for collection of this data is the statute establishing the Department of Energy, that being the Department of Energy Organization Act, as amended, Public Law 95–91 (Aug. 4, 1977) (the ''Act.''). It vests the Secretary of Energy with the executive direction and management function, authority, and responsibilities for the Department, including contract management. Section 644 of the Act, codified at 42 U.S.C. 7254, states that ''the Secretary is authorized to prescribe such procedural and administrative rules as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him.'' Further, section 646(a) of the Act, codified at 42 U.S.C. 7256(a), provides that ''[t]he Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.''

Issued in Washington, DC on March 16, 2009.

David Geiser,

Deputy Director, Office of Legacy Management.

[FR Doc. E9–6411 Filed 3–23–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings#1

March 16, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–787–008.
Applicants: Idaho Power Company.
Description: Compliance filing of Idaho Power Company.
Filed Date: 03/11/2009.
Accession Number: 20090311–5198.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER07–1356–009; ER07–1358–008; ER07–1112–007; ER07–1113–007; ER07–1115–008; ER07–1116–006; ER07–1117–008; ER07–1118–008; ER07–1120–008; ER07–1122–008; ER00–2885–023; ER01–2765–022; ER08–148–008; ER02–1582–020; ER05–1232–017; ER03–1283–017; ER02–2102–022; ER09–335–003.
Applicants: J.P. Morgan Ventures Energy Corporation, BE Allegheny LLC, BE CA LLC, BE Colquitt LLC, BE Ironwood LLC, BE KJ LLC, BE Rayle LLC, BE Satilla LLC, BE Walton LLC, BE Alabama LLC, BE Louisiana LLC, Central Power & Lime, Inc., Cedar Brakes I, L.L.C., Mohawk River Funding IV, L.L.C., Utility Contract Funding, L.L.C., Vineland Energy LLC, Cedar Brakes II, L.L.C.
Description: Notice of non-material changes of status of J.P. Morgan Ventures Energy Corporation, *et al.*
Filed Date: 03/11/2009.
Accession Number: 20090311–5227.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER08–54–011.
Applicants: ISO New England Inc.
Description: Report of ISO New England Inc. Regarding Report of ISO New England Regarding Implementation of Market Rule Changes to Permit Non-Generating Resources to Participate in the Regulation Market.
Filed Date: 12/19/2008.
Accession Number: 20081219–5158.
Comment Date: 5 p.m. Eastern Time on Thursday, March 26, 2009.

Docket Numbers: ER08–354–003.
Applicants: Wells Fargo Energy Markets, LLC.
Description: Wells Fargo Energy Markets, LLC notifies FERC of a non-material change in status in connection with the acquisition of Wachovia Corp etc.
Filed Date: 03/11/2009.
Accession Number: 20090312–0275.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER08–1237–002.
Applicants: Shiloh Wind Project 2, LLC.
Description: Notice of Non-Material Change in Status of Shiloh Wind Project 2, LLC.
Filed Date: 03/11/2009.
Accession Number: 20090311–5181.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER09–411–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits response to FERC's 2/9/09 request for additional information.
Filed Date: 03/11/2009.
Accession Number: 20090316–0064.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER09–621–003.
Applicants: TAQA Gen X LLC.
Description: TAQA Gen X, LLC submits a clean and blacklined version of its FERC Electric Tariff, Original Volume 1.
Filed Date: 03/11/2009.
Accession Number: 20090312–0280.
Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER09–805–000.
Applicants: Quntum Energy LLC.
Description: Quntum Energy, LLC submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority & requests acceptance of FERC Electric Tariff, Original Volume 1.
Filed Date: 03/13/2009.
Accession Number: 20090316–0223.
Comment Date: 5 p.m. Eastern Time on Friday, April 3, 2009.

Docket Numbers: ER09–826–000.
Applicants: Michigan Waste Energy, Inc.
Description: Michigan Waste Energy, Inc submits FERC Electric Tariff, Original Volume 1.
Filed Date: 03/12/2009.
Accession Number: 20090313–0116.
Comment Date: 5 p.m. Eastern Time on Thursday, April 2, 2009.

Docket Numbers: ER09–832–000; ER09–544–001.
Applicants: NextEra Energy Power Marketing, LLC, FPL Energy Power Marketing, LLC.

Description: NextEra Energy submits Notice of Succession, Revisions to Market-Based Rate Tariff, and Notice of Non-Material Change in Status to reflect the name change.

Filed Date: 03/11/2009.

Accession Number: 20090312–0274.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER09–833–000.

Applicants: Entergy Services, Inc.

Description: Entergy Operating Companies resubmits an amendment to Service Schedule MSS–3 of the Entergy System Agreement.

Filed Date: 03/10/2009.

Accession Number: 20090312–0273.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 31, 2009.

Docket Numbers: ER09–834–000.

Applicants: Wyoming Colorado Intertie, LLC.

Description: Wyoming Colorado Intertie, LLC submits an Application for Authority To Sell Transmission Rights at Negotiated Rates, to be effective 3/12/09.

Filed Date: 03/11/2009.

Accession Number: 20090312–0282.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER09–835–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits a Transmission Interconnection Agreement etc with Desert Power *et al.*

Filed Date: 03/11/2009

Accession Number: 20090312–0276.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER09–836–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits proposed revisions to its Market Administration and Control Area Services Tariff.

Filed Date: 03/11/2009.

Accession Number: 20090312–0277.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER09–837–000.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits a Service Agreement for the Resale, Reassignment of transfer of Point-to-Point Transmission Service with CER Generation, LLC.

Filed Date: 03/11/2009.

Accession Number: 20090312–0278.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: ER09–838–000.

Applicants: Entegra Power Services LLC.

Description: Entergra Power Services LLC Request for Acceptance of Initial Market-Based Rate Tariff, Waivers and Blanket Authority.

Filed Date: 03/13/2009.

Accession Number: 20090316–0224.

Comment Date: 5 p.m. Eastern Time on Friday, April 3, 2009.

Docket Numbers: ER09–839–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest ISO submits Facilities Construction Agreement among Wapsipinicon Power Partners, LLC, *et al.*

Filed Date: 03/12/2009.

Accession Number: 20090313–0128.

Comment Date: 5 p.m. Eastern Time on Thursday, April 2, 2009.

Docket Numbers: ER09–840–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revised tariff sheets for the Interconnection Facilities Agreement between SCE and WM Energy Solutions, Inc, etc.

Filed Date: 03/12/2009.

Accession Number: 20090313–0127.

Comment Date: 5 p.m. Eastern Time on Thursday, April 2, 2009.

Docket Numbers: ER09–841–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Engineering and Procurement Agreement dated 2/10/09 between PacifiCorp and Three Buttes Windpower, LLC, etc.

Filed Date: 03/12/2009.

Accession Number: 20090313–0126.

Comment Date: 5 p.m. Eastern Time on Thursday, April 2, 2009.

Docket Numbers: ER09–842–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits executed interconnection service agreement among PJM, Stony Creek Wind Farm, LLC, *et al.*

Filed Date: 03/12/2009.

Accession Number: 20090313–0125.

Comment Date: 5 p.m. Eastern Time on Thursday, April 2, 2009.

Docket Numbers: ER09–843–000.

Applicants: Maine Public Service Company.

Description: Maine Public Service Company submits informational filing setting forth the changed loss factor eff. 3/1/09 along with back up materials.

Filed Date: 03/12/2009.

Accession Number: 20090313–0123.

Comment Date: 5 p.m. Eastern Time on Thursday, April 2, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–12–005; OA08–113–002.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation's Order 890 Non-Generation Compliance Filing.

Filed Date: 03/11/2009.

Accession Number: 20090311–5201.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 1, 2009.

Docket Numbers: OA08–14–005; OA08–106–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Compliance filing of Midwest Independent Transmission System Operator, Inc.

Filed Date: 03/12/2009.

Accession Number: 20090312–5106.

Comment Date: 5 p.m. Eastern Time on Thursday, April 2, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in

Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6351 Filed 3–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

March 17, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–59–000.

Applicants: Wachovia Corporation, Wells Fargo & Company.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act and Request for Waiver of Certain Commission Requirements.

Filed Date: 03/11/2009.

Accession Number: 20090311–5113.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 01, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–1952–007; ER01–1784–010; ER03–222–009; ER08–333–003; ER08–851–002; ER99–1248–009.

Applicants: Black Hills Colorado, LLC; Fountain Valley Power, LLC; Las Vegas Cogeneration II, LLC; Las Vegas Cogeneration LP; Valencia Power, LLC; Harbor Cogeneration Company, LLC.

Description: Southwest Generation Operating Co, LLC *et al.* submits statement that it has not erected barriers to entry into the wholesale energy markets and that it will not erect barries to entry into the wholesale energy markets.

Filed Date: 03/13/2009.

Accession Number: 20090316–0082.

Comment Date: 5 p.m. Eastern Time on Friday, April 03, 2009.

Docket Numbers: ER06–615–042; ER07–1257–010.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits instant filing in compliance with the FERC order Conditional Accepting Tariff Modifications issued 2/19/09.

Filed Date: 03/13/2009.

Accession Number: 20090316–0219.

Comment Date: 5 p.m. Eastern Time on Friday, April 03, 2009.

Docket Numbers: ER09–554–001.

Applicants: EcoGrove Wind, LLC.

Description: EcoGrove Wind, LLC submits a First Revised Sheet 1 of its Tariff to replace Original Sheet 1 of its Tariff.

Filed Date: 03/13/2009.

Accession Number: 20090316–0222.

Comment Date: 5 p.m. Eastern Time on Friday, April 03, 2009.

Docket Numbers: ER09–740–001.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits Substitute Original Sheet 11 *et al.* to FERC Electric Tariff, Fourth Revised Volume 3 Service Agreement 301.

Filed Date: 03/13/2009.

Accession Number: 20090316–0220.

Comment Date: 5 p.m. Eastern Time on Friday, April 03, 2009.

Docket Numbers: ER09–764–001.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Company submits revised tariff sheets Second Revised Volume 1 *et al.* to FERC Electric Tariff, Second Revised Volume 2 to be effective 1/6/09.

Filed Date: 03/11/2009.

Accession Number: 20090312–0279.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 01, 2009.

Docket Numbers: ER09–768–000.

Applicants: Saranac Power Partners, L.P.

Description: Saranac Power Partners, L.P., Amendment to MBR Application.

Filed Date: 03/16/2009.

Accession Number: 20090316–5176.

Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: ER09–775–001.

Applicants: TexRep2 LLC.

Description: TexRep2, LLC submits amended notification of cancellation to FERC Electric Tariff, Original Volume No 1.

Filed Date: 03/12/2009.

Accession Number: 20090313–0124.

Comment Date: 5 p.m. Eastern Time on Thursday, April 02, 2009.

Docket Numbers: ER09–844–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Electric Utility Services Agreement dated 2/13/09 between Rocky Mountain Power, d/b/a PacifiCorp, and Price City, to be designated as PacifiCorp Rate Schedule FERC 640.

Filed Date: 03/13/2009.

Accession Number: 20090316–0217.

Comment Date: 5 p.m. Eastern Time on Friday, April 03, 2009.

Docket Numbers: ER09–845–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits for filing Revenue Metering Construction Agreement for the Chehalis generation facility agreement dated 2/1/2009 with PacifiCorp Commercial & Trading as Service Agreement 550 under their Seventh Revised Volume 11 OATT.

Filed Date: 03/13/2009.

Accession Number: 20090316–0216.

Comment Date: 5 p.m. Eastern Time on Friday, April 03, 2009.

Docket Numbers: ER09–846–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff.

Filed Date: 03/13/2009.

Accession Number: 20090316–0221.

Comment Date: 5 p.m. Eastern Time on Friday, April 03, 2009.

Docket Numbers: ER09–847–000.

Applicants: Eastern Desert Power LLC.

Description: Eastern Desert Power LLC submits Notice of Cancellation of its market based rate tariff, FERC Electric Tariff, Volume 1 to become effective 5/12/09.

Filed Date: 03/13/2009.

Accession Number: 20090316–0215.

Comment Date: 5 p.m. Eastern Time on Friday, April 03, 2009.

Docket Numbers: ER09–848–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits revised rate sheets to the Second Amended and Restates Letter Agreement to (Second Amended SCE Letter Agreement) to the Amended and Restated Eldorado System Operation Agreement *etc.*

Filed Date: 03/13/2009.

Accession Number: 20090316–0214.

Comment Date: 5 p.m. Eastern Time on Friday, April 03, 2009.

Docket Numbers: ER09–849–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection LLC submits an executed Wholesale Market Participation Agreement entered into among PJM, Borough Participation Agreement for filing because Lehighton intends to engage in wholesale sales in the PJM *etc.*

Filed Date: 03/13/2009.

Accession Number: 20090316–0213.

Comment Date: 5 p.m. Eastern Time on Friday, April 03, 2009.

Docket Numbers: ER09–853–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement entered into among PJM, BP Wind Energy North America etc.

Filed Date: 03/16/2009.

Accession Number: 20090317–0262.

Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: ER09–854–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Orange and Rockland Utilities, Inc submits amendment to Orange and Rockland Utilities, Inc Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No 3.

Filed Date: 03/16/2009.

Accession Number: 20090317–0263.

Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Docket Numbers: ER09–855–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest ISO submits Facilities Construction Agreement among Wapsipinicon Power Partners LLC, etc.

Filed Date: 03/16/2009.

Accession Number: 20090317–0264.

Comment Date: 5 p.m. Eastern Time on Monday, April 06, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR07–14–003; RR08–6–002.

Applicants: North American Electric Reliability Corp.

Description: Response to Data Request of North American Electric. Reliability Corporation to the FERC's February 27, 2009 Data Request.

Filed Date: 03/16/2009.

Accession Number: 20090316–5179.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 06, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–6417 Filed 3–23–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–516–459]

South Carolina Electric & Gas Company; Notice of Intent To Prepare an Environmental Assessment and Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

March 17, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and are available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 516–459.

c. *Date Filed:* August 28, 2008.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Project.

f. *Location:* On the Saluda River in Richland, Lexington, Saluda, and Newberry counties, South Carolina. The project does not occupy any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* William R. Argentieri, Manager—Civil Engineering, South Carolina Electric & Gas Company, 111 Research Drive, Columbia, South Carolina 29203, (803) 217–9162.

i. *FERC Contact:* Lee Emery, at *lee.emery@ferc.gov,* or (202) 502–8379.

j. *Deadline for Filing Scoping Comments:* May 8, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov/docs-filing/ferconline.asp)* under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

k. This application is not ready for environmental analysis at this time.

l. The existing 207.3-megawatt Saluda Project consists of a single development with the following features: (1) A 7,800-foot-long, 213-foot-high earth-fill dam (Saluda dam), with South Carolina State Highway 6 (Highway 6) running along the top of the dam; (2) a dike that extends 2,550 feet from the north end of the dam, running parallel with Highway 6; (3) a 2,900-foot-long emergency spillway, with six steel Taintor gates, that is located 500 feet from the south end of Saluda dam, and a spillway channel that reconnects with the Saluda River about 0.75 miles downstream from the Saluda powerhouse; (4) a 2,300-foot-long, 213-foot-high roller compacted concrete backup dam located along the downstream toe of the Saluda dam, with (i) a crest elevation of 372.0 feet North American Vertical Datum of 1988

(NAVD88),[1] and (ii) rock fill embankment sections on the north and south ends of the backup dam, having a combined length of 5,700 feet; (5) a 41-mile-long, 50,900-acre reservoir (Lake Murray) at a full pool elevation of 358.5 feet NAVD88, with a total usable storage of approximately 635,000 acre-feet; (6) five 223-foot-high intake towers and associated penstocks; (7) a concrete and brick powerhouse containing four vertical Francis turbine generating units (three at 32.5 MW and one at 42.3 MW), and a fifth vertical Francis turbine generating unit (67.5 MW), which is enclosed in a weather-tight housing located on a concrete deck attached to the south end of the main powerhouse; (8) a 150-foot-long tailrace; and (9) appurtenant facilities. There is no transmission line or bypassed reach associated with the project.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register Online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Scoping Process.

The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: Wednesday, April 8, 2009.
Time: 9 a.m. (EST)
Place: Saluda Shoals Park Auditorium.
Address: 5605 Bush River Road, Columbia, SC.

Public Scoping Meeting

Date: Wednesday, April 8, 2009.
Time: 6:30 p.m. (EST)
Place: Saluda Shoals Park Auditorium.
Address: 5065 Bush River Road, Columbia, SC.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

Site Visit

The Applicant and FERC staff will conduct a project site visit beginning at 9 a.m. (EST) on Tuesday, April 7, 2009. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the Saluda Project powerhouse, 6428 Bush River Road, Columbia, SC 29212. Those individuals wishing to participate in the site visit should notify William Argentieri of their intent and provide their name, address, and social security number no later than Tuesday, March 31, 2009. All participants are responsible for their own transportation to the site and lunch. Anyone with questions about the site visit (or needing directions) should contact William Argentieri at (803) 217–9162 or by e-mail at *bargentieri@scana.com.*

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6287 Filed 3–23–09; 8:45 am]

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[1] The license application contains documents that provide elevations based on NAVD88 datum or based on Plant Datum. To convert from Plant Datum to NAVD88 datum, subtract 1.5 feet.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–39–000]

FirstEnergy Solutions Corp.; Notice of Filing

March 17, 2009.

Take notice that on March 4, 2009, FirstEnergy Solutions Corp. filed a Petition for Declaratory Order, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2008).

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. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 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 April 3, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6285 Filed 3–23–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–615–000, ER07–1257–000, ER08–1113–000, ER08–1178–000, OA08–62–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

March 17, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following dates members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *http://www.caiso.com.*

March 18, 2009	MRTU Implementation Workshop and BPM Change Management.
March 19, 2009	IBAA Supplemental Training 2009 Post MRTU Go Live Release Plan.
March 24, 2009	MRTU Parallel Operations Touchpoint 2010 California ISO Transmission Plan Meeting Methodology for Calculating Projected Proxy Costs.
March 25, 2009	Congestion Revenue Rights Settlements and Market Clearing User Group.
March 26, 2009	MRTU Parallel Operations Touchpoint Board of Governors and Committee Meetings.
March 27, 2009	Board of Governors and Committee Meetings.

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants, and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above captioned dockets.

FOR FURTHER INFORMATION, CONTACT: Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov;* (916) 294–0322 or Maury Kruth at *maury.kruth@ferc.gov,* (916) 294–0275.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6286 Filed 3–23–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–76–005]

Algonquin Gas Transmission, LLC; Notice of Motion To Vacate

March 17, 2009.

Take notice that on February 9, 2009, Algonquin Gas Transmission, LLC (Algonquin), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP07–76–005, a motion to vacate a portion of the certificate authority granted on December 21, 2006 [1] allowing Algonquin to construct, install, own, operate, and maintain certain facilities, known as the Ramapo Expansion Project. Algonquin states that because of the change in primary receipt point for the KeySpan firm transportation capacity from the Cheshire compressor station to the Brookfield Meter Station, the rebuild of the existing Mars 90 turbine (12,600 HP) at the Stony Point Station to a Mars 100 turbine (15,000 HP) will not be required.

The motion is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Steven E. Hellman, Associate General Counsel, Algonquin Gas Transmission, LLC, 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, phone (713) 627–5215.

There are two ways to become involved in the Commission's review of Algonquin's request. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to East Tennessee's project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only in support of or in opposition to East Tennessee's request should submit an original and two copies of their comments to the Secretary of the Commission. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

[1] *Algonquin Gas Transmission, LLC,* 117 FERC ¶ 61,319 (2006) (''December 21 Order'').

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: April 7, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6288 Filed 3–23–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process Procedures

March 16, 2009.

FFP Project 3, LLC.	Project No. 12856–001.
FFP Project 4, LLC.	Project No. 12849–001.
FFP Project 5, LLC.	Project No. 12862–001.
FFP Project 6, LLC.	Project No. 12848–001.
FFP Project 7, LLC.	Project No. 12851–001.
Free Flow Power Corporation.	Project No. 12833–001.
FFP Project 10, LLC.	Project No. 12866–001.
FFP Project 11, LLC.	Project No. 12855–001.
FFP Project 12, LLC.	Project No. 12853–001.
FFP Project 13, LLC.	Project No. 12854–001.
FFP Project 14, LLC.	Project No. 12845–001.
FFP Project 15, LLC.	Project No. 12864–001.
FFP Project 16, LLC.	Project No. 12858–001.
FFP Project 17, LLC.	Project No. 12865–001.
FFP Project 18, LLC.	Project No. 12857–001.
FFP Project 19, LLC.	Project No. 12842–001.
FFP Project 20, LLC.	Project No. 12869–001.
FFP Project 21, LLC.	Project No. 12863–001.
FFP Project 22, LLC.	Project No. 12860–001.
FFP Project 23, LLC.	Project No. 12843–001.
FFP Project 24, LLC.	Project No. 12844–001.
Free Flow Power Corporation.	Project No. 12828–001.
Free Flow Power Corporation.	Project No. 12822–001.
Free Flow Power Corporation.	Project No. 12817–001.
FFP Project 29, LLC.	Project No. 12918–001.
FFP Project 30, LLC.	Project No. 12927–001.
FFP Project 37, LLC.	Project No. 12928–001.
FFP Project 38, LLC.	Project No. 12926–001.
FFP Project 39, LLC.	Project No. 12925–001.
FFP Project 40, LLC.	Project No. 12929–001.
FFP Project 43, LLC.	Project No. 12931–001.
FFP Project 44, LLC.	Project No. 12942–001.
FFP Project 45, LLC.	Project No. 12937–001.
FFP Project 46, LLC.	Project No. 12936–001.
FFP Project 47, LLC.	Project No. 12932–001.
FFP Project 48, LLC.	Project No. 12934–001.
FFP Project 49, LLC.	Project No. 12933–001.
FFP Project 50, LLC.	Project No. 12941–001.
FFP Project 51, LLC.	Project No. 12940–001.
FFP Project 52, LLC.	Project No. 12939–001.
FFP Project 53, LLC.	Project No. 12914–001.
FFP Project 55, LLC.	Project No. 12917–001.
FFP Project 58, LLC.	Project No. 12913–001.
FFP Project 59, LLC.	Project No. 12916–001.

a. *Type of Filing:* Notice of Intent To File License Application and Request To Use the Traditional Licensing Process (TLP).

b. *Project Nos.:* P–12856, P–12849, P–12862, P–12848, P–12851, P–12833, P–12866, P–12855, P–12853, P–12854, P–12845, P–12864, P–12858, P–12865, P–12857, P–12842, P–12869, P–12863, P–12860, P–12843, P–12844, P–12828, P–12822, P–12817, P–12918, P–12927, P–12928, P–12926, P–12925, P–12929, P–12931, P–12942, P–12937, P–12936, P–12932, P–12934, P–12933, P–12941, P–12940, P–12939, P–12914, P–12917, P–12913, and P–12916.

c. *Dated Filed:* January 15, 2009.

d. *Submitted By:* Free Flow Power Corporation and the subsidiary limited liability corporations (listed above and collectively referred to below as ''Free Flow Power'').

e. *Name of Projects:* Free Flow Power Mississippi River TLP Projects.

f. *Locations:* On the Mississippi River, in Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Ms. Ramya Swaminathan, Vice President, Free Flow Power, 33 Commercial Street, Gloucester, MA 01930, (978) 226–1531, *rswaminathan@free-flow-power.com.*

i. *FERC Contact:* Stephen Bowler at (202) 502–6861 or *stephen.bowler@ferc.gov* and Sarah Florentino at (202) 502–6863 or *sarah.florentino@ferc.gov.*

j. Free Flow Power filed its request to use the Traditional Licensing Process on January 15, 2009. On March 13, 2009, Free Flow Power filed a supplement to its PAD. In a letter dated March 16, 2009, the Director of the Office of Energy Projects approved Free Flow Power Corporation's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 C.F.R., Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the State Historic Preservation Officers of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Free Flow Power Corporation as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 106 of the National Historic Preservation Act.

m. Free Flow Power Corporation filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov)*, using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related

to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6282 Filed 3–23–09; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

March 16, 2009.

Free Flow Power Corporation.	Project No. 12829–001.
FFP Project 28, LLC.	Project No. 12861–001.
FFP Project 32, LLC.	Project No. 12921–001.
FFP Project 41, LLC.	Project No. 12930–001.
FFP Project 42, LLC.	Project No. 12938–001.
FFP Project 54, LLC.	Project No. 12915–001.
FFP Project 57, LLC.	Project No. 12912–001.

a. *Type of Filing:* Notice of intent to file license application for original licenses and commencing licensing proceedings.

b. *Project Nos.:* P–12829, P–12861, P–12921, P–12930, P–12938, P–12915, P–12912.

c. *Dated Filed:* January 15, 2009.

d. *Submitted By:* Free Flow Power Corporation and its subsidiary limited liability corporations listed above (collectively referred to below as ''Free Flow Power'').

e. *Name of Projects:* Greenville Bend Hydrokinetic Project, Scotlandville Bend Hydrokinetic Project, Kempe Bend Hydrokinetic Project, Ashley Point Hydrokinetic Project, Hope Field Point Hydrokinetic Project, Flora Creek Light Hydrokinetic Project, and McKinley Crossing Hydrokinetic Project (Lead Projects).

f. *Locations:* On the Mississippi River, in Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee. No Federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Ms. Ramya Swaminathan, Vice President of Project Development, Free Flow Power, 33 Commercial Street, Gloucester, MA 01930, (978) 226–1531, *rswaminathan@free-flow-power.com*.

i. *FERC Contact:* Stephen Bowler at (202) 502–6861 or e-mail at *stephen.bolwer@ferc.gov* and Sarah Florentino at (202) 502–6863 or e-mail at *sarah.florentino@ferc.gov*.

j. We are asking Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Free Flow Power as the Commission's non-Federal representative for carrying out informal consultation pursuant to section 106 of the National Historic Preservation Act.

m. Free Flow Power filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project names (Greenville Bend Hydrokinetic Project, Scotlandville Bend Hydrokinetic Project, Kempe Bend Hydrokinetic Project, Ashley Point Hydrokinetic Project, Hope Field Point Hydrokinetic Project, Flora Creek Light Hydrokinetic Project, and McKinley Crossing Hydrokinetic Project) and numbers (V12829–001, P–12861–001, P–12921–001, P–12930–001, P–12938–001, P–12915–001, and P–12912–001 respectively), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by May 15, 2009.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

p. Our current intent is to prepare an Environmental Impact Statement (EIS).

Scoping Meetings

Commission staff will hold two initial scoping meetings in the vicinity of the projects at the time and place noted below. The daytime meeting will focus on resource agency, Indian Tribes, and non-governmental organization concerns, while the evening meeting is

primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Tuesday, April 14, 2009.
Time: 2 p.m.
Location: Vicksburg Convention Center, 1600 Mulberry Street, Vicksburg, MS 39180.
Phone: Toll free (866) 822–6338.

Evening Scoping Meeting

Date: Tuesday, April 14, 2009.
Time: 7 p.m.
Location: Vicksburg Convention Center, 1600 Mulberry Street, Vicksburg, MS 39180.
Phone: Toll free (866) 822–6338.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process. We will announce additional scoping meetings at locations near the proposed Lead Projects and site visits at a later date.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of Federal, State, and Tribal permitting and certification processes; and (5) discuss the appropriateness of any Federal or State agency or Indian Tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceedings on the projects.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6283 Filed 3–23–09; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF09–261–000]

Lafarge Midwest, Inc.; Notice of Filing of Notice of Self-Certification of Qualifying Status of a Cogeneration Facility

March 17, 2009.

Take notice that on March 11, 2009, Lafarge Midwest, Inc., of 1435 Ford Avenue, Alpena, MI 49707 filed with the Federal Energy Regulatory Commission (Commission) a notice of self-certification of a facility as a qualifying cogeneration facility, pursuant to 18 CFR 292.207(a) of the Commission's regulations.

The facility produces cement as its primary activity. Waste heat from this process is used to create steam, which serves as the primary energy source for the production of electricity. Five turbines are driven by the steam; each turbine is linked to a generator. The combined nameplate capacity of the cogeneration facility is 48.75 MW.

Excess power results from the aforesaid cogeneration process will be sold to Alpena Power Company, which is interconnected with the Qualifying Facility.

A notice of self-certification does not institute a proceeding regarding qualifying facility status; a notice of self-certification provides notice that the entity making the filing has determined the Facility meets the applicable criteria to be a qualifying facility. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii).

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–6284 Filed 3–23–09; 8:45 am]

BILLING CODE

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2005–0001; FRL–8786–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; General Administrative Requirements for Assistance Programs; EPA ICR No. 0938.16, OMB Control Number 2030–0020

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 23, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2005–0001, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Alexandra Raver, Office of Grants and Debarment, National Policy, Training and Compliance Division, Mail Code: 3903R, Environmental Protection

Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5296; fax number: (202) 565–2470; e-mail address: *Raver.Alexandra@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 3, 2008 (73 FR 65307), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OARM–2005–0001, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Office of Environmental Information 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 Office of Environmental Information Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: General Administrative Requirements for Assistance Programs.

ICR numbers: EPA ICR No. 0938.16, OMB Control Number 2030–0020.

ICR Status: This ICR is scheduled to expire on April 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and 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: The information is collected from applicants/recipients of EPA assistance to monitor adherence to the programmatic and administrative requirements of the Agency's financial assistance program. It is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA's General Regulation for Assistance Programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). 40 CFR part 30, ''Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations,'' includes the management requirements for potential grantees from non-profit organizations. 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' includes the management responsibilities for potential State and local government grantees. These regulations include only those provisions mandated by statute, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. This ICR combines all of these requirements under OMB Control Number 2030–0020. The information required by these regulations will be used by EPA award officials to make assistance awards and assistance payments and to verify that the recipient is using Federal funds appropriately to comply with OMB Circulars A–21, A–87, A–102, A–110, A–122, A–128, and A–133, which set forth the pre-award, post-award, and after-the-grant requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 19 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Applicants and recipients of EPA assistance agreements.

Estimated Number of Respondents: 6,105.

Frequency of Response: On occasion, quarterly, and annually.

Estimated Total Annual Hour Burden: 114,531.

Estimated Total Annual Cost: $5,930,031. This includes an estimated labor cost of $5,930,031 and $0 for capital investment or maintenance and operational costs.

Changes in the Estimates: There is an increase of 5,917 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase resulted from the addition and elimination of some grant forms as well as updates to the ICR's burden estimates.

Dated: March 17, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–6402 Filed 3–23–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2005–0008; FRL–8786–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emergency Planning and Release Notification Requirements Under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304 (Renewal); EPA ICR No. 1395.07, OMB Control No. 2050–0092

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44

U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 23, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2005–0008, to (1) EPA Online using *http://www.regulations.gov* (our preferred method), by e-mail to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Office of Emergency Management, Mailcode 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–2620; e-mail address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 12, 2008 (73 *FR* 75706), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2005–0008, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund 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 8:30 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 Superfund Docket is 202–566–1744.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304 (Renewal).

ICR numbers: EPA ICR No. 1395.07, OMB Control No. 2050–0092.

ICR Status: This ICR is scheduled to expire on May 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The authority for these requirements is sections 302, 303, and 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11002, 11003, and 11004). EPCRA established broad emergency planning and facility reporting requirements. Section 302 requires facilities to notify their State emergency response commission (SERC) that the facility is subject to emergency planning. This activity has been completed; this ICR covers only new facilities that are subject to this requirement. Section 303 requires the local emergency planning committees (LEPCs) to prepare emergency plans for facilities that are subject to section 302. This activity has been also completed; this ICR only covers any updates needed for these emergency response plans. Section 304 requires facilities to report to SERCs and LEPCs releases in excess of the reportable quantities listed for each extremely hazardous substance (EHS). This ICR also covers the notification and the written follow-up required under this section. The implementing regulations and the list of substances for emergency planning and emergency release notification are codified in 40 CFR part 355.

On November 3, 2008 (73 *FR* 64452), EPA revised some of the requirements in 40 CFR part 355, specifically, the requirements related to emergency planning notification. EPA is now requiring facilities to notify their LEPC within 30 days of any changes occurring at the facility that may be relevant to emergency planning. This revision should not impose any additional burden on facilities subject to emergency planning. Prior to the November 3, 2008 final rule, facilities were required to provide any changes to the LEPC promptly. This final rule now requires facilities to provide any changes within 30 days. Other revisions finalized on November 3, 2008, do not impose any burden on facilities subject to section 302 and 304 requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are those which have a threshold planning quantity of an extremely hazardous substance (EHS) listed in 40 CFR part 355, Appendix A and those which have a release of any of the EHS above a reportable quantity. Entities more likely to be affected by this action may include chemical manufacturers, non-chemical manufacturers, retailers, petroleum refineries, utilities, etc.

Estimated Number of Respondents: 98,456 (annual).

Frequency of Response: EPCRA section 302 reporting is a one-time

notification unless there are changes to the reported information; EPCRA section 304 notification is only when a release occurs from the facility.

Estimated Total Annual Hour Burden: 295,756 hours.

Estimated Total Annual Cost: $13,134,444, including $68,719 annualized O&M costs. There are no capital costs associated with this ICR.

Changes in the Estimates: Based on the information received from the Regions, the number of facilities subject to section 302 increased by 18,080 from the previous ICR. EPA also noticed that the release notification calls to the National Response Center also increased by 10,502 from the previous ICR. EPA underestimated the burden incurred by facilities in developing written follow-up reports under section 304 in previous ICRs. In this ICR, EPA developed an average for the burden incurred to comply with section 304 reporting based on the information provided by industries that the Agency contacted.

Due to the reasons above, there is an increase of 112,409 hours in the estimated average annual burden in this ICR from what is currently approved.

Dated: March 18, 2009.

John Moses,

Acting Director, Collection Strategies Division.

[FR Doc. E9–6410 Filed 3–23–09; 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

March 18, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 23, 2009. 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 the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission, or an e-mail to *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information 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: 3060–0718.

Title: Part 101 Rule Sections Governing the Terrestrial Microwave Fixed Radio Service.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 9,500 respondents; 27,292 responses.

Estimated Time Per Response: .25–3 hours.

Frequency of Response: On occasion and every 10 reporting requirements, third party disclosure requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 309, 310 and 316.

Total Annual Burden: 35,242 hours.

Total Annual Cost: $553,000.

Privacy Act Impact Assessment: No.

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as an extension during this comment period to obtain the full three-year clearance from them. The Commission is reporting a decrease in the total annual burden hours due to 500 fewer respondents and reflects revised estimates based on updated licensing data. Additionally, the Commission is reporting a significant increase in the estimated number of responses for each rule section that is under this OMB control number. Finally, the Commission is reporting a $79,000 increase in the annual respondent costs due to an adjustment or recalculation of those cost estimates.

Part 101 rule sections require various information to be reported to the Commission, coordinated with third parties, posting requirements, notification requirements to the public and recordkeeping requirements maintained by the respondent to determine the technical, legal and other qualifications of applications to operate a station in the public and private operational fixed services.

The information is used to determine whether the public interest, convenience and necessity are being served as required by 47 U.S.C. section 309. The Commission staff also use this information to ensure that applicants and licensees comply with ownership and transfer restrictions imposed by 47 U.S.C. section 310.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–6430 Filed 3–23–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

March 18, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995 (PRA), 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 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 PRA comments should be submitted on or before April 23, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via the Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167; and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC, 20554, or via the Internet at *Cathy.Williams@fcc.gov* and/or *PRA@fcc.gov.* Include in the comments the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918, or via the Internet at *Cathy.Williams@fcc.gov,* and/or *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0761.

Title: Section 79.1, Closed Captioning of Video Programming, CG Docket No. 05–231.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; and Not-for-profit entities.

Number of Respondents and Responses: 14,283 respondents; 109,999 responses.

Estimated Time per Response: 15 minutes (0.25 hours) to 10 hours.

Frequency of Response: Annual and on occasion reporting requirements; Third party disclosure requirement; Recordkeeping requirement.

Total Annual Burden: 226,335 hours.

Total Annual Cost: $37,340,142.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this obligation is found at section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, and implemented at 47 CFR 79.1.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice, FCC/CGB–1, ''Informal Complaints and Inquiries.''

Privacy Impact Assessment: The Privacy Impact Assessment for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.*

Needs and Uses: On July 21, 2005, the Commission released *Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking,* CG Docket No. 05–231, Notice of Proposed Rulemaking, FCC 05–142, published at 70 FR 56150 on September 26, 2005 *(Closed Captioning Notice of Proposed Rulemaking),* which sought comment on several issues pertaining to the Commission's closed captioning rules (47 CFR 79.1), which require that, with some exceptions, all new video programming, and 75 percent of ''pre-rule'' programming, eventually be closed captioned. The *Closed Captioning Notice of Proposed Rulemaking* sought comment, *inter alia,* on whether petitions for exemption from the closed captioning rules should be permitted (or required) to be filed electronically through the Commission's Electronic Comment Filing System, and whether video programming distributors should be required to submit compliance reports to the Commission in cases where the types of video programming that they air are still subject to a phase-in period, or where the final required amount of captioning post phase-in (*e.g.*, pre-rule programming) is not 100 percent.

On November 7, 2008, the Commission released *Closed Captioning of Video Programming; Closed Captioning Requirements for Digital Television Receivers,* CG Docket No. 05–231 and ET Docket No. 99–24, Declaratory Ruling, Order and Notice of Proposed Rulemaking, FCC 08–255 *(2008 Order),* published at 74 FR 1594 on January 13, 2009, addressing some of the issues raised in the *Closed Captioning Notice of Proposed Rulemaking.* The *2008 Order* streamlined and simplified the closed captioning complaint process by shortening the time frames associated with filing and responding to complaints, and by permitting complaints to be filed directly with the Commission, rather than requiring that they be filed with the video programming distributor first. The *2008 Order* also adopted new rules requiring video programming distributors to make contact information available in phone directories, on the Commission's Web site and their own Web sites (if they have them), and in billing statements (to the extent they issue them). With this contact information, consumers can more easily and promptly contact the appropriate person or office at a video programming distributor to report closed captioning problems or to file complaints.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–6435 Filed 3–23–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 17, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law No. 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 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 PRA comments should be submitted on or before May 26, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0055.

Title: Application for Cable Television Relay Service Station License.

Form Number: FCC Form 327.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents/Response: 400 respondents; 400 responses.

Frequency of Response: On occasion reporting requirement; Every five years reporting requirement.

Obligation to Respond: Required to obtain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 308 and 309 of the Communications Act of 1934, as amended.

Estimated Time per Response: 3 hours.

Total Annual Burden: 1,266 hours.

Total Annual Costs: $98,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: FCC Form 327 is the application for a Cable Television Relay Service (CARS) microwave radio license. Franchised cable systems and other eligible services use the 2, 7, 12 and 18 GHz CARS bands for microwave relays pursuant to Part 78 of the Commission's Rules. CARS is principally a video transmission service used for intermediate links in a distribution network. CARS stations relay signals for and supply program material to cable television systems and other eligible entities using point-to-point and point-to-multipoint transmissions. These relay stations enable cable systems and other CARS licensees to transmit television broadcast and low power television and related audio signals, AM and FM broadcast stations, and cablecasting from one point (e.g., on one side of a river or mountain) to another point (e.g., the other side of the river or mountain) or many points (''multipoint'') via microwave.

The filing is done for an initial license, for modification of an existing license, for transfer or assignment of an existing license, and for renewal of a license after five years from initial issuance or from renewal of a license. Filing is done in accordance with 47 CFR Sections 78.11 to 78.40 of the Commission's Rules. FCC Form 327 consists of multiple schedules and exhibits, depending on the specific action for which it is filed. Initial applications are the most complete and renewal applications are the most brief. The data collected is used by Commission staff to determine whether grant of a license is in accordance with Commission requirements on eligibility, permissible use, efficient use of spectrum, and prevention of interference to existing stations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–6437 Filed 3–23–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 3, 2009.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Patriot Financial Partners, GP, L.P., Patriot Financial Partners, L.P., Patriot Financial Partners Parallel, L.P., Patriot Financial Partners, GP, LLC, Patriot Financial Managers, L.P., and Messrs. Ira M. Lubert, W. Kirk Wycoff and James J. Lynch, all of Philadelphia, Pennsylvania; to purchase up to 14.9 percent of Guaranty Bancorp, and thereby acquire shares of Bank and Trust Company, both in Denver, Colorado.

Board of Governors of the Federal Reserve System, March 17, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–6094 Filed 3–23–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 6, 2009.

A. Federal Reserve Bank of Kansas City (Todd Offerbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. David Rossiter, Hartington, Nebraska, individually and as trustee of the Mary E. Rossiter Trust, and Carol F. Rossiter, Macon, Georgia, individually and as trustee of the Mary E. Rossiter Trust, and the Margaret R. Rossiter Trust; to retain control of Cedar Bancorp, Inc., parent of Bank of Hartington, both in Hartington, Nebraska, through the acquisition of voting shares. Also, Donald W. Rossiter, Carol F. Rossiter, Phyllis Schrempp, J. Scott Schrempp, Christine Rossiter, and Leon Schrempp, a group acting in concert, to retain control of Cedar Bancorp, Inc. parent of bank of Hartington, Nebraska.

Board of Governors of the Federal Reserve System, March 19, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–6407 Filed 3–23–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Minier Financial, Inc. Employee Stock Ownership Plan with 401(k) Provisions, Minier, Illinois; to increase its ownership of Minier Financial, Inc., Minier, Illinois, from 29 percent to up to 51 percent, and thereby increase its indirect ownership of First Farmers State Bank, Minier, Illinois.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Farmers and Merchants Bankshares, Inc., Stuttgart, Arkansas; to acquire 100 percent of Lee County Bancshares, Inc., Marianna, Arkansas, and thereby indirectly acquire First National Bank at Marianna, Marianna, Arkansas.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Glacier Bancorp, Inc., Kalispell, Montana; to acquire 100 percent of the voting shares of First Company, Cody, Wyoming, and thereby indirectly acquire First National Bank and Trust Company, Powell, Wyoming.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. National Bank and Trust Employee Stock Ownership Plan With 401(k) Provisions, La Grange, Texas; to acquire additional shares of First La Grange Bancshares, Inc., La Grange, Texas, and indirectly acquire National Bank and Trust, La Grange, Texas.

Board of Governors of the Federal Reserve System, March 17, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–6093 Filed 3–23–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0279]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice

directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Proposed Project: Institutional Review Board/Independent Ethics Committee Forms Modification–OMB No. 0990–0279—Office for Human Research Protections.

Abstract: The Office for Human Research Protections (OHRP) is requesting a modification to the current Institutional Review Board (IRB) Independent Ethics Committee (IEC) Registration Form designed to provide a simplified procedure for institutions engaged in Department of Health and Human Services (HHS) conducted or supported research to satisfy the assurance requirements of Section 491(a) of the Public Health Service Act and HHS regulations for the protection of human subjects at 45 CFR 46.103. The form is being modified to be consistent with IRB-Registration requirements that are included in the Office for Human Research Protections (OHRP) and the Food and Drug Administration (FDA) final rules on IRB registration requirements. Respondents for this information collection are institutions or organizations operating IRBs designated by an institution under an assurance of compliance approved for federalwide use by OHRP under 45 CFR 46.103(a) and that review human subjects research conducted or supported by HHS, or, in the case of FDA's regulation, each IRB in the United States that reviews clinical investigations regulated by FDA under sections 505(i) or 520(g) of the Federal Food, Drug and Cosmetic Act; and each IRB in the United States that reviews clinical investigations that are intended to support applications for research or marketing permits for FDA-regulated products.

ESTIMATED ANNUALIZED BURDEN TABLE

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
IRB Registration 0990–0279	6,000	2	1	12,000
FDA–IRB	1,000	2	1	2,000
Total				14,000

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E9–6429 Filed 3–23–09; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees for the Baker Perkins Atomic Weapons Employer Facility in Saginaw, MI, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for the Baker Perkins Atomic Weapons Employer facility in Saginaw, Michigan, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Baker Perkins Atomic Weapons Employer.

Location: Saginaw, Michigan.

Job Titles and/or Job Duties: All employees.

Period of Employment: May 14, 1956 through July 12, 1968.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–6368 Filed 3–23–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees for the Electro-Metallurgical Corporation Facility, Niagara Falls, NY, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for the Electro-Metallurgical Corporation facility, Niagara Falls, New York, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Electro-Metallurgical Corporation.

Location: Niagara Falls, New York.

Job Titles and/or Job Duties: All employees.

Period of Employment: August 13, 1942 through December 31, 1953.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Christine M. Branche,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. E9–6380 Filed 3–23–09; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Report/ACF 204 (State MOE)—1 collection.

OMB No.: 0970–0248.

Description: The Administration for Children and Families (ACF) is requesting a three-year extension of the ACF–204 (Annual MOE Report). The report is used to collect descriptive program characteristics information on the programs operated by States and Territories in association with their Temporary Assistance for Needy Families (TANF) programs. All State and Territory expenditures claimed toward States and Territories MOE requirements must be appropriate, i.e., meet all applicable MOE requirements. The Annual MOE Report provides the ability to learn about and to monitor the nature of State and Territory expenditures used to meet States and Territories MOE requirements, and it is an important source of information about the different ways that States and Territories are using their resources to help families attain and maintain self-sufficiency. In addition, the report is used to obtain State and Territory program characteristics for ACFs annual report to Congress, and the report serves as a useful resource to use in Congressional hearings about how TANF programs are evolving, in assessing State the Territory MOE expenditures, and in assessing the need for legislative changes.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–204	54	1	118	6,372
OLDC system updates	54	2	0.13	13.50

Estimated Total Annual Burden Hours: 6,385.50.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: March 19, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–6452 Filed 3–23–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0354]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Mental Models Study of Farmers' Understanding and Implementation of Good Agricultural Practices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 23, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title, ''Mental Models Study of Farmers' Understanding and Implementation of Good Agricultural Practices.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Mental Models Study of Farmers' Understanding and Implementation of Good Agricultural Practices

The proposed information collection will help FDA protect the public from foodborne illness by increasing the agency's understanding of how farmers and growers use Good Agricultural Practices (GAPs) to address common risk factors in their operations and thereby minimize food safety hazards potentially associated with fresh produce. Fresh fruits and vegetables are those that are likely to be sold to consumers in an unprocessed or minimally processed (i.e., raw) form and that are reasonably likely to be consumed raw. Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393 (b)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the Nation's food supply. Under Title 42 of the Public Health Service Act (1944), FDA has authority to act to protect the public health.

In 1998, FDA issued a guidance document entitled ''Guide to Minimize

Microbial Food Safety Hazards for Fresh Fruits and Vegetables,'' available at *http://www.cfsan.fda.gov/~dms/prodguid.html*. The guidance addresses microbial food safety hazards and good agricultural and good management practices common to the growing, harvesting, washing, sorting, packing, and transporting of most fruits and vegetables sold to consumers in an unprocessed or minimally processed (raw) form.

There is evidence that growers have not fully implemented the GAPs to reduce production risks, despite intensive GAPS training programs. FDA is planning to conduct a study to determine growers' decision-making processes with regard to understanding and implementing GAPs on the farm, to more fully understand the barriers and constraints associated with GAPs implementation.

The project will use ''mental modeling,'' a qualitative research method wherein the decision-making processes of a group of respondents (described below) concerning the implementation of GAPs on the farm are modeled and compared to a model based on expert knowledge and experience in the implementation of GAPs. The information will be collected via a telephone interview concerning the factors that influence the perceptions and motivations related to the implementation of GAPs. A comparison between expert and consumer models based on the collected information may identify ''consequential knowledge gaps'' that can be redressed through information campaigns designed by FDA.

Description of respondents:

Respondents will be farmers or growers, GAPs trainers, and retail buyer and/or grower association representatives.

In the **Federal Register** of July 1, 2008 (73 FR 37464), FDA published a 60-day notice requesting public comment on the proposed information collection. FDA received one letter in response to the notice, containing one or more comments. One comment recommended that FDA increase the sample size and ensure that key subsets of the produce industry are surveyed. FDA responds that the proposed study is qualitative in nature. FDA does not intend the results of this study to be a quantitative estimate of the prevalence of the use of GAPs across the produce industry. The proposed sample size is sufficient to enable FDA to construct mental models of the barriers and constraints related to GAPs implementation. FDA agrees with the recommendation to ensure key subsets of the industry are included in the study.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screener	80	1	80	0.02	2
Pre-tests/ Cognitive Interviews	9	1	9	.75	6.75
Farmers/ Growers	24	1	24	.75	18
GAPs Trainers	24	1	24	.75	18
Retail Buyers/ Growers Association Representatives	12	1	12	.75	9
Total					53.75

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

In the 60-day notice published on July 1, 2008, FDA estimated the total burden hours to be 51.75. FDA has made changes to its burden estimate, reflected in table 1 of this document. FDA added a screener and listed the participants separately in the table. The new total burden hours are estimated to be 53.75 and are described in the following paragraphs.

Approximately 80 respondents will be screened. We estimate that it will take a respondent 1.2 minutes (0.02 hours) to complete the screening questions, for a total of 1.6 hours (rounded to 2). FDA will conduct 9 pretests; we estimate that it will take respondents 45 minutes (0.75 hours) to complete the pretest, for a total of 6.75 hours. Sixty respondents will complete the interview. We estimate that it will take respondents 45 minutes (0.75 hours) to complete the entire interview, for a total of 45 hours. Thus, the total estimated burden is 53.75 hours. FDA's burden estimate is based on prior experience with mental models research that is similar to this proposed study.

The study will involve approximately 60 respondents, including 24 farmers or growers of fruits and vegetables, 24 GAPs trainers, and 12 retail buyer or grower association representatives. FDA estimates that each respondent will take 45 minutes (0.75 hours) to complete the interview for the study (60 respondents x 0.75 hours = 45 hours).

Thus, the total annual burden for this one-time collection of information is 53.75 hours (2 hours + 6.75 hours + 45 hours = 53.75 hours). These estimates are based on FDA's experience with consumer research.

Dated: March 17, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–6393 Filed 3–23–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prescription Drug Marketing Act of 1987

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an

opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting and recordkeeping requirements contained in the regulations implementing the Prescription Drug Marketing Act of 1987 (PDMA) (Public Law 100–293).

DATES: Submit written or electronic comments on the collection of information by May 26, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Dockets Management Branch (HFA 305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and 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 through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prescription Drug Marketing Act of 1987; Administrative Procedures, Policies, and Requirements; 21 CFR Part 203 (OMB Control Number 0910–0435)—Extension

FDA is requesting OMB approval under the Paperwork Reduction Act (44 USC 3501–3520) for the reporting and recordkeeping requirements contained in the regulations implementing the PDMA. PDMA was intended to ensure that drug products purchased by consumers are safe and effective and to avoid an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs are sold.

PDMA was enacted by Congress because there were insufficient safeguards in the drug distribution system to prevent the introduction and retail sale of substandard, ineffective, or counterfeit drugs, and that a wholesale drug diversion submarket had developed that prevented effective control over the true sources of drugs.

Congress found that large amounts of drugs had been reimported into the United States as U.S. goods returned causing a health and safety risk to U.S. consumers because the drugs may become subpotent or adulterated during foreign handling and shipping. Congress also found that a ready market for prescription drug reimports had been the catalyst for a continuing series of frauds against U.S. manufacturers and had provided the cover for the importation of foreign counterfeit drugs.

Congress also determined that the system of providing drug samples to physicians through manufacturers' representatives had resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.The bulk resale of below-wholesale priced prescription drugs by health care entities for ultimate sale at retail also helped to fuel the diversion market and was an unfair form of competition to wholesalers and retailers who had to pay otherwise prevailing market prices.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements:

REPORTING REQUIREMENTS

21 CFR 203.11	Applications for reimportation to provide emergency medical care.
21 CFR 203.30(a)(1) and (b)	Drug sample requests (drug samples distributed by mail or common carrier).
21 CFR 203.30(a)(3),(a)(4) and (c)	Drug sample receipts (receipts for drug samples distributed by mail or common carrier).
21 CFR 203.31(a)(1) and (b)	Drug sample requests (drug samples distributed by means other than the mail or a common carrier).
21 CFR 203.31(a)(3),(a)(4) and (c)	Drug sample receipts (drug samples distributed by means other than the mail or a common carrier).
21 CFR 203.37(a)	Investigation of falsification of drug sample records.
21 CFR 203.37(b)	Investigation of a significant loss or known theft of drug samples.
21 CFR 203.37(c)	Notification that a representative has been convicted of certain offenses involving drug samples.
21 CFR 203.37(d)	Notification of the individual responsible for responding to a request for information about drug samples.
21 CFR 203.39(g)	Preparation by a charitable institution of a reconciliation report for donated drug samples.

RECORDKEEPING REQUIREMENTS

21 CFR 203.23(a) and (b)	Credit memo for returned drugs.
21 CFR 203.23(c)	Documentation of proper storage, handling, and shipping conditions for returned drugs.
21 CFR 203.30(a)(2) and 21 CFR 203.31(a)(2)	Verification that a practitioner requesting a drug sample is licensed or authorized by the appropriate State authority to prescribe the product.
21 CFR 203.31(d)(1) and (d)(2)	Contents of the inventory record and reconciliation report required for drug samples distributed by representatives.
21 CFR 203.31(d)(4)	Investigation of apparent discrepancies and significant losses revealed through the reconciliation report.
21 CFR 203.31(e)	Lists of manufacturers' and distributors' representatives.
21 CFR 203.34	Written policies and procedures describing administrative systems.
21 CFR 203.37(a)	Report of investigation of falsification of drug sample records.
21 CFR 203.37(b)	Report of investigation of significant loss or known theft of drug samples.
21 CFR 203.38(b)	Records of drug sample distribution identifying lot or control numbers of samples distributed. (The information collection in 21 CFR 203.38(b) is already approved under OMB Control Number 0910–0139).
21 CFR 203.39(d)	Records of drug samples destroyed or returned by a charitable institution.
21 CFR 203.39(e)	Record of drug samples donated to a charitable institution.
21 CFR 203.39(f)	Records of donation and distribution or other disposition of donated drug samples.
21 CFR 203.39(g)	Inventory and reconciliation of drug samples donated to charitable institutions.
21 CFR 203.50(a)	Drug origin statement.
21 CFR 203.50(b)	Retention of drug origin statement for 3 years.
21 CFR 203.50(d)	List of authorized distributors of record.

The reporting and recordkeeping requirements are intended to help achieve the following goals:

(1) To ban the reimportation of prescription drugs produced in the U.S., except when reimported by the manufacturer or under FDA authorization for emergency medical care;

(2) To ban the sale, purchase, or trade, or the offer to sell, purchase, or trade, of any prescription drug sample;

(3) To limit the distribution of drug samples to practitioners licensed or authorized to prescribe such drugs or to pharmacies of hospitals or other health care entities at the request of a licensed or authorized practitioner;

(4) To require licensed or authorized practitioners to request prescription drug samples in writing;

(5) To mandate storage, handling, and recordkeeping requirements for prescription drug samples;

(6) To prohibit, with certain exceptions, the sale, purchase, or trade of, or the offer to sell, purchase, or trade, prescription drugs that were purchased by hospitals or other health care entities, or which were donated or supplied at a reduced price to a charitable organization;

(7) To require unauthorized wholesale distributors to provide, prior to the wholesale distribution of a prescription drug to another wholesale distributor or retail pharmacy, a statement identifying each prior sale, purchase, or trade of the drug.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
203.11	1	1	1	.5	0.5
203.30(a)(1) and (b)	61,961	12	743,532	.06	44,612
203.30(a)(3), (a)(4) and (c)	61,961	12	743,532	.06	44,612
203.31(a)(1) and (b)	232,355	135	31,367,925	.04	1,254,717
203.31(a)(3), (a)(4) and (c)	232,355	135	31,367,925	.03	941,038
203.37(a)	50	4	200	.25	50

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
203.37(b)	50	40	2,000	.25	500
203.37(c)	1	1	1	1	1
203.37(d)	50	1	50	.08	4
203.39(g)	1	1	1	1	1
Total					2,285,535.50

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
203.23(a) and (b)	31,676	5	158,380	.25	39,595
203.23(c)	31,676	5	158,380	.08	12,670
203.30(a)(2) and 203.31(a)(2)	2,208	100	220,800	.50	110,400
203.31(d)(1) and (d)(2)	2,208	1	2,208	40	88,320
203.31(d)(4)	442	1	442	24	10,608
203.31(e)	2,208	1	2,208	1	2,208
203.34	90	1	90	40	3,600
203.37(a)	50	4	200	6	1,200
203.37(b)	50	40	2,000	6	12,000
203.39(d)	65	1	65	1	65
203.39(e)	3,221	1	3,221	.50	1,610
203.39(f)	3,221	1	3,221	8	25,768
203.39(g)	3,221	1	3,221	8	25,768
203.50(a)	0	0	0	0	0
203.50(b)	0	0	0	0	0
203.50(d)	0	0	0	0	0
Total					324,092

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 17, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–6394 Filed 3–23–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Vaccine Design PO1.

Date: April 16, 2009.

Time: 10 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.
Contact Person: Kenneth E. Santora, PhD., Scientific Review Officer, Scientific Review Program, NIH/NIAID/DHHS, Room 3146, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2605. *ks216i@nih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6469 Filed 3–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Heart Pumps for Children with Cardiomyopathy.
Date: April 14, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Hilton Crystal City Reagan National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Robert Blaine Moore, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7213, Bethesda, MD 20892, 301–594–8394, *mooreb@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Characterizing the Blood Stem Cell Niche.
Date: April 23, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Robert T. Su, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924, 301–435–0297, *sur@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Loan Repayment Program (L30's).
Date: April 30, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)
Contact Person: Rina Das, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892–7924, 301–435–0297, *dasr2@nhlbi.nih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6476 Filed 3–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel. 2009 New Innovator Award Pre-Application Review.
Date: April 22, 2009.
Time: 7 a.m. to 11:59 p.m.
Agenda: To review and evaluate review of 2009 New Innovator pre-applications.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Richard T. Okita, PhD, Program Director, Pharmacological and Physiological Sciences Branch, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AS–49, Bethesda, MD 20892, 301–594–4469. *okitar@nigms.nih.gov.*
(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6470 Filed 3–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Bioinformatics Resource Centers for Infectious Diseases.
Date: April 22, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Lynn Rust, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge

Drive, MSC 7616, Bethesda, MD 20892, 301–402–3938. *lr228v@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel. Bioinformatics Resource Centers for Infectious Diseases.

Date: April 23, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lynn Rust, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892. 301–402–3938. *lr228v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6477 Filed 3–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, NIH.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, NIH.

Date: April 16, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To address the NIH's implementation plans associated with the American Recovery and Reinvestment Act of 2009.

Place: National Institutes of Health, Building 1, 1 Center Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Penny W. Burgoon, PhD, Senior Assistant to the Deputy Director, Office of the Director, National Institutes of Health, 1 Center Drive, Building 1, Room 109, Bethesda, MD 20892, 301–451–5870, *burgoonp@od.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/about/director/acd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–6472 Filed 3–23–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Notice Designating Rutgers, the State University of New Jersey, as Data Sciences Lead Institution for the DHS Center of Excellence for Command, Control and Interoperability

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security has designated Rutgers, the State University of New Jersey (Rutgers) as a DHS Center of Excellence for Command, Control and Interoperability

FOR FURTHER INFORMATION CONTACT: Joseph Kielman, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528; telephone 202–254–5787; e-mail *joseph.kielman@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 308 of the Homeland Security Act of 2002, Public Law 107–296, (the ''Homeland Security Act''), as amended by the Consolidated Appropriations Resolution 2003, Public Law 108–7, and as codified in Title 6 of the United States Code Chapter I Subchapter III Section 188(b)(2) [6 U.S.C. 188(b)(2)], directs the Department of Homeland Security (''Department'') to sponsor extramural research, development, demonstration, testing and evaluation programs relating to homeland security. As part of this program, the Department has established a coordinated system of university-based centers for homeland security (the ''Centers'').

The Centers are envisioned to be an integral component of the Department's capability to anticipate, prevent, respond to, and recover from terrorist attacks and natural disasters. The Centers will leverage multidisciplinary capabilities and fill gaps in current knowledge.

6 U.S.C. 188(b)(2)(B) lists fourteen areas of substantive expertise that, if demonstrated, might qualify universities for designation as university-based centers. The listed areas of expertise include: (1) The training of first responders; (2) responding to incidents involving weapons of mass destruction and biological warfare; (3) emergency and diagnostic medical services; (4) chemical, biological, radiological and nuclear countermeasures or detection; (5) animal and plant health and diagnostics; (6) food safety; (7) water and wastewater operations; (8) port and waterway security; (9) multi-modal transportation; (10) information security and information engineering; (11) engineering; (12) educational outreach and technical assistance; (13) border and transportation security; and (14) the public policy implications and public dissemination of homeland security relevant research and development.

However, this list is not exclusive. 6 U.S.C. 188(b)(2)(C) gives the Secretary discretion to except certain criteria specified in 6 U.S.C. 188(b)(2)(B) and consider additional criteria beyond those specified in 6 U.S.C. 188(b)(2)(B) in selecting universities for this program, as long as the Department issues a **Federal Register** notice explaining the criteria used for the designation. This Center of Excellence will address statutory criterion 6 U.S.C. 188(b)(2)(B)(10), information security and information engineering.

Evaluation

The Department of Homeland Security (DHS) chose Rutgers University and its partner institutions for the new Center of Excellence (COE) through a merit-based, competitive, and rigorous review process consistent with guidelines set forth in Section 308 of the Homeland Security Act of 2002 (Pub. L. 107–296), as amended. The DHS Science and Technology Directorate (S&T) issued a research funding opportunity announcement (FOA) soliciting applications for the establishment of a COE for the Study of Command, Control and Interoperability (CCI) issues on May 1, 2008 on *http://www.grants.gov.*

DHS received eight proposals in response to this announcement. External subject matter experts considered the merits of these proposals with respect to the evaluation criteria in the announcement and referred four

proposals to a DHS internal review panel. DHS subject matter experts evaluated the proposals in light of DHS priorities and investments and made recommendations. A select team of S&T staff made site visits to all four applicants considered by the internal review panel. At the end of the competitive review, University Programs selected the lead institutions in accordance with Section 308 of the Homeland Security Act of 2002.

Criteria

As communicated in the funding opportunity announcement and to the reviewers, the evaluation criteria for proposals were as follows. The first six criteria (a–f) were critical elements of the proposal and were of equal significance. Proposals that did not provide satisfactory responses to all of these essential criteria were declined. The remaining criteria (g–m) also were important to meeting S&T's overall objectives. They were listed in approximate descending order of importance, and needed to be fully addressed by applicants.

a. Responsiveness: The degree to which the proposal directly responds to the research areas, topics or questions described in the funding opportunity announcement, with appropriate scientific theory, methods, and data.

b. Technical Merit and Quality: The degree to which the proposed research focus will achieve excellence (to offer results capable of commanding the respect of active researchers and of probing a frontier area well). The originality and creativity of the proposed research questions and the appropriateness and adequacy of the proposed research methods.

c. Mission-Related Significance: The degree to which the proposed research focus can yield results that overcome existing and difficult technical limitations, or that offer the scientific basis to enable major technological advances in the foreseeable future. The responsiveness of the proposal to the research needs identified in this announcement and the willingness and ability of the applicants to consult with Federal, state, local and private stakeholders to refine research questions and design to make results applicable to homeland security issues or policy.

d. Geographical distribution of all Centers of Excellence and major partners: The Centers of Excellence program's authorizing legislation states: ''* * * the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing and evaluation programs so as to ensure that colleges, universities, private research institutes and companies from as many regions of the United States as practicable participate.'' Geographical location of the lead institution and its major partners will be a factor in evaluating proposals submitted in response to this COE.

e. Qualifications of Investigators: The qualifications of the principal investigator(s) and other key personnel, including training, demonstrated knowledge of pertinent literature, experience, and publication records, and the extent to which key personnel will make a significant time commitment to the project.

f. Productive Use of Federal Resources: The ability to extend the productivity of Federal funds and other resources through matching funds, leveraging of other new fund sources, in-kind provision of faculty, student support, dedicated office or laboratory space.

g. Facilities and Equipment: The availability and/or adequacy of the facilities and equipment proposed for the project.

h. Management: The ability of the lead institution to manage a complex Center of Excellence in terms of achieving research results when due, managing large and complex budgets and communicating research outcomes, and the adequacy of the proposed management plan to ensure quality research and education programs from researchers at both primary and partner institutions.

i. *Minority Serving Institution Partnerships:* The demonstrated ability and commitment to establish meaningful partnerships with MSIs to develop a quality MSI research and training program, and the quality of the proposed program.

j. *Education:* The adequacy of education plans and supporting materials demonstrating the proposed COE's ability to establish an enduring and comprehensive program of study in disciplines related to the specific research areas cited in this announcement.

k. *Knowledge of Current Research:* Evidence that the applicant is familiar with the research and resources of existing DHS COEs, other DHS S&T, federal agency or National Laboratory research and development programs, and other relevant university programs and can demonstrate its ability to take advantage of these resources.

l. *Results Transition:* The effectiveness and soundness of a strategy to transition research results to end users and mechanisms to accomplish this transition, and demonstration of a clear and effective plan for transitioning research results for each project or research area ultimately to homeland security mission agencies.

m. *Budget:* Although budget information does not reflect on the application's scientific merit, the evaluation will include the appropriateness and/or adequacy of the proposed budget and its implications for the potential success of the proposed research. Input on requested equipment is of particular interest.

Summary

This COE will conduct fundamental research into the technological issues, challenges, and policy issues related to 1. Dynamic, on-demand data processing and visualization; 2. hypothesis-driven data analysis; 3. visualization of structured, unstructured, and streaming data; 4. mathematics of discrete and visual analytics; 5. scalable information filtering and dissemination; 6. visualization and simulation of information; 7. mobile and light-weight information analytics and sharing. This COE will create the scientific basis and enduring technologies needed to analyze massive amounts of information from multiple sources to more reliably detect threats to the security of the nation and its infrastructures, and to the health and welfare of its populace. These new technologies will also improve the dissemination of both information and related technologies.

Based on information collected in the evaluation process, DHS designated Rutgers, the State University of New Jersey, as Data Sciences Lead Institution for the Command, Control and Interoperability Center of Excellence, in partnership with Purdue University (the Visualization Sciences and Education Lead Institution) and other affiliates. This team of institutions is uniquely well qualified and located to address data analysis, visualization, cyber security and other related issues. They will become an intrinsic part of the DHS science and technology portfolio, working closely with DHS and other Federal, State, and local governments to solve complex and critical data and visualization science challenges.

Matthew Clark,

Director, University Programs, Science and Technology Directorate, Department of Homeland Security.

[FR Doc. E9–6451 Filed 3–23–09; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Notice Designating Purdue University as Visualization Sciences and Education Lead Institution for the DHS Center of Excellence for Command, Control and Interoperability

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Department of Homeland Security has designated Purdue University as Visualization Sciences and Education Lead Institution for the DHS Center of Excellence for Command, Control and Interoperability.

FOR FURTHER INFORMATION CONTACT: Joseph Kielman, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528; telephone 202–254–5787; e-mail *joseph.kielman@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 308 of the Homeland Security Act of 2002, Public Law 107–296, (the ''Homeland Security Act''), as amended by the Consolidated Appropriations Resolution 2003, Public Law 108–7, and as codified in Title 6 of the United States Code Chapter I Subchapter III Section 188(b)(2) [6 U.S.C. 188(b)(2)], directs the Department of Homeland Security (''Department'') to sponsor extramural research, development, demonstration, testing and evaluation programs relating to homeland security. As part of this program, the Department has established a coordinated system of university-based centers for homeland security (the ''Centers'').

The Centers are envisioned to be an integral component of the Department's capability to anticipate, prevent, respond to, and recover from terrorist attacks and natural disasters. The Centers will leverage multidisciplinary capabilities and fill gaps in current knowledge.

Title 6 U.S.C. 188(b)(2)(B) lists fourteen areas of substantive expertise that, if demonstrated, might qualify universities for designation as university-based centers. The listed areas of expertise include: (1) The training of first responders; (2) responding to incidents involving weapons of mass destruction and biological warfare; (3) emergency and diagnostic medical services; (4) chemical, biological, radiological and nuclear countermeasures or detection; (5) animal and plant health and diagnostics; (6) food safety; (7) water and wastewater operations; (8) port and waterway security; (9) multi-modal transportation; (10) information security and information engineering; (11) engineering; (12) educational outreach and technical assistance; (13) border and transportation security; and (14) the public policy implications and public dissemination of homeland security relevant research and development.

However, this list is not exclusive. Title 6 U.S.C. 188(b)(2)(C) gives the Secretary discretion to except certain criteria specified in 6 U.S.C. 188(b)(2)(B) and consider additional criteria beyond those specified in 6 U.S.C. 188(b)(2)(B) in selecting universities for this program, as long as the Department issues a **Federal Register** notice explaining the criteria used for the designation. This Center of Excellence will address statutory criterion 6 U.S.C. 188(b)(2)(B)(10), information security and information engineering.

Evaluation

The Department of Homeland Security (DHS) chose Purdue University and its partner institutions for the new Center of Excellence (COE) through a merit-based, competitive, and rigorous review process consistent with guidelines set forth in Section 308 of the Homeland Security Act of 2002 (Pub. L. 107–296), as amended. The DHS Science and Technology Directorate (S&T) issued a research funding opportunity announcement (FOA) soliciting applications for the establishment of a COE for the Study of Command, Control and Interoperability (CCI) issues on May 1, 2008 on *http://www.grants.gov.*

DHS received eight proposals in response to this announcement. External subject matter experts considered the merits of these proposals with respect to the evaluation criteria in the announcement and referred four proposals to a DHS internal review panel. DHS subject matter experts evaluated the proposals in light of DHS priorities and investments and made recommendations. A select team of S&T staff made site visits to all four applicants considered by the internal review panel. At the end of the competitive review, University Programs selected the lead institutions in accordance with Section 308 of the Homeland Security Act of 2002.

Criteria

As communicated in the funding opportunity announcement and to the reviewers, the evaluation criteria for proposals were as follows. The first six criteria (a–f) were critical elements of the proposal and were of equal significance. Proposals that did not provide satisfactory responses to all of these essential criteria were declined. The remaining criteria (g–m) also were important to meeting S&T's overall objectives. They were listed in approximate descending order of importance, and needed to be fully addressed by applicants.

a. *Responsiveness:* The degree to which the proposal directly responds to the research areas, topics or questions described in the funding opportunity announcement, with appropriate scientific theory, methods, and data.

b. *Technical Merit and Quality:* The degree to which the proposed research focus will achieve excellence (to offer results capable of commanding the respect of active researchers and of probing a frontier area well). The originality and creativity of the proposed research questions and the appropriateness and adequacy of the proposed research methods.

c. *Mission-Related Significance:* The degree to which the proposed research focus can yield results that overcome existing and difficult technical limitations, or that offer the scientific basis to enable major technological advances in the foreseeable future. The responsiveness of the proposal to the research needs identified in this announcement and the willingness and ability of the applicants to consult with Federal, State, local and private stakeholders to refine research questions and design to make results applicable to homeland security issues or policy.

d. *Geographical Distribution of All Centers of Excellence and Major Partners:* The Centers of Excellence program's authorizing legislation states: '' * * * the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing and evaluation programs so as to ensure that colleges, universities, private research institutes and companies from as many regions of the United States as practicable participate.'' Geographical location of the lead institution and its major partners will be a factor in evaluating proposals submitted in response to this COE.

e. *Qualifications of Investigators:* The qualifications of the principal investigator(s) and other key personnel, including training, demonstrated knowledge of pertinent literature, experience, and publication records, and the extent to which key personnel will make a significant time commitment to the project.

f. *Productive Use of Federal Resources:* The ability to extend the productivity of Federal funds and other resources through matching funds,

leveraging of other new fund sources, in-kind provision of faculty, student support, dedicated office or laboratory space.

g. *Facilities and Equipment:* The availability and/or adequacy of the facilities and equipment proposed for the project.

h. *Management:* The ability of the lead institution to manage a complex Center of Excellence in terms of achieving research results when due, managing large and complex budgets and communicating research outcomes, and the adequacy of the proposed management plan to ensure quality research and education programs from researchers at both primary and partner institutions.

i. *Minority Serving Institution Partnerships:* The demonstrated ability and commitment to establish meaningful partnerships with MSIs to develop a quality MSI research and training program, and the quality of the proposed program.

j. *Education:* The adequacy of education plans and supporting materials demonstrating the proposed COE's ability to establish an enduring and comprehensive program of study in disciplines related to the specific research areas cited in this announcement.

k. *Knowledge of Current Research:* Evidence that the applicant is familiar with the research and resources of existing DHS COEs, other DHS S&T, Federal agency or National Laboratory research and development programs, and other relevant university programs and can demonstrate its ability to take advantage of these resources.

l. *Results Transition:* The effectiveness and soundness of a strategy to transition research results to end users and mechanisms to accomplish this transition, and demonstration of a clear and effective plan for transitioning research results for each project or research area ultimately to homeland security mission agencies.

m. *Budget:* Although budget information does not reflect on the application's scientific merit, the evaluation will include the appropriateness and/or adequacy of the proposed budget and its implications for the potential success of the proposed research. Input on requested equipment is of particular interest.

Summary

This COE will conduct fundamental research into the technological issues, challenges, and policy issues related to (1) dynamic, on-demand data processing and visualization; (2) hypothesis-driven data analysis; (3) visualization of structured, unstructured, and streaming data; (4) mathematics of discrete and visual analytics; (5) scalable information filtering and dissemination; (6) visualization and simulation of information; (7) mobile and light-weight information analytics and sharing. This COE will create the scientific basis and enduring technologies needed to analyze massive amounts of information from multiple sources to more reliably detect threats to the security of the nation and its infrastructures, and to the health and welfare of its populace. These new technologies will also improve the dissemination of both information and related technologies.

Based on information collected in the evaluation process, DHS designated Purdue University as Visualization Sciences and Education Lead Institution for the DHS Center of Excellence for Command, Control and Interoperability, in partnership with Rutgers University (the Data Sciences Lead Institution) and other affiliates. This team of institutions is uniquely well qualified and located to address data analysis, visualization, cyber security and other related issues. They will become an intrinsic part of the DHS science and technology portfolio, working closely with DHS and other Federal, State, and local governments to solve complex and critical data and visualization science challenges.

Matthew Clark,

Director, University Programs, Science and Technology Directorate, Department of Homeland Security.

[FR Doc. E9–6450 Filed 3–23–09; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0169]

Head and Gut Fleet; Guidance for Implementation of the Alternate Compliance and Safety Agreement Program

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of guidance for implementation of the Alternate Compliance and Safety Agreement program for ''head and gut fleet'' vessels. The guidance clarifies various elements contained in the original 2006 policy letter relating to that program, and in a 2006 **Federal Register** notice that announced the availability of that policy letter. Among these elements is the issuance of a conditional load line exemption for head and gut vessels.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail M. M. Rosecrans, Chief, Fishing Vessel Safety Division (CG–5433), U.S. Coast Guard; telephone 202–372–1245, e-mail *Michael.M.Rosecrans@uscg.mil.*

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

In the August 22, 2006 **Federal Register** (71 FR 48932), we announced the availability of Coast Guard G–PCV policy letter 06–03, concerning the applicability of vessel classification and load line requirements set by 46 CFR Part 28, Subpart F, and 46 CFR Subchapter E to ''head and gut fleet'' vessels. The head and gut (H&G) fleet consists of approximately 60 vessels that operate in the Gulf of Alaska and the Bering Sea/Aleutian Island fisheries. Crews on H&G vessels not only catch fish, but also freeze and package the catch for later distribution to foreign and domestic markets. Due to the age of most H&G vessels and the costs associated with compliance, the majority of the H&G fleet cannot comply with classification and load line requirements. The policy announced in 2006 provides a safe and economical alternative: H&G vessel owners may apply for and be granted an exemption from those requirements, so long as they meet Alternate Compliance and Safety Agreement (ACSA) program elements that provide an equivalent level of safety. The ACSA Program was developed in 2006 to process individual requests for exemption letters under 46 CFR 28.60. The Program allows exemptions to the class and Load Line requirements while at the same time creating improved safety requirements for these vessels, thereby avoiding the incentive to operate strictly as uninspected fishing vessels. ACSA vessel owners work with the Coast Guard to develop alternative standards for their vessels, and compliance with those standards is facilitated through voluntary vessel examination by Coast Guard personnel. Guidance for implementation of the ACSA program is available at *http://www.fishsafe.info/acsaguidance.* This guidance document reiterates and clarifies information already provided in the ACSA Program governing guidance of the G–PCV Policy

Letter 06–03, as supplemented by the ACSA Implementation Message issued in 2008, which is attached as Annex 4 at the end of the guidance document.

Specifically, the guidance document provides new details with respect to the exemption of H&G vessels from the load line requirements, which is contained in the ACSA Implementation Message. Because H&G vessels engage in catching fish, they meet the definition of ''fishing vessel'' under the International Convention on Load Lines, 1966, and are not subject to international load line requirements. In accordance with 46 U.S.C. 5108(a)(1), a vessel entitled to an exemption under an international agreement may also be granted an exemption under U.S. law. Therefore, a District Commander may exempt an owner's H&G vessel from domestic voyage load line requirements, pursuant to 46 CFR 42.03–30, upon verification by the Officer in Charge, Marine Inspection that the vessel is fully enrolled and in compliance with the elements of the ACSA program. This exemption may be granted at the same time the vessel is granted an exemption from classification requirements, pursuant to 46 CFR 28.60, and noted in the same exemption letter in lieu of a separate load line exemption certificate.

Dated: March 18, 2009.

Rear Admiral James A. Watson,

Director of Prevention Policy.

[FR Doc. E9–6422 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–0178]

National Offshore Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet, in Corpus Christi, TX, to discuss various issues relating to offshore safety and security. The meeting will be open to the public.

DATES: NOSAC will meet on Thursday, April 23, 2009, from 9 a.m. to 3 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 9, 2009. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before April 9, 2009.

ADDRESSES: NOSAC will meet in the ''Corpus A'' room of the Omni Corpus Christi Hotel, 900 North Shoreline Blvd., Corpus Christi, Texas. Send written material and requests to make oral presentations to Commander P. W. Clark, Designated Federal Officer (DFO), Commandant (CG–5222), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on our Online docket, USCG–2009–0178, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Commander P. W. Clark, Designated Federal Officer of NOSAC, or Mr. Jim Magill, Assistant Designated Federal Officer, telephone 202–372–1414, fax 202–372–1926.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Meeting

The agenda for the April 23, 2009, committee meeting includes the following:

(1) Report on issues concerning the International Maritime Organization (IMO) and the International Organization for Standardization.

(2) Revision of 46 CFR, Subchapter V, Subpart B—Commercial Diving Operations.

(3) MARPOL Annex II Implementation and IMO Resolution A.673 for Offshore Supply Vessels (OSVs).

(4) Employment of Foreign Workers on the OCS.

(5) Evacuation of Injured Workers from Remote Drilling and Production Facilities.

(6) Transportation Worker Identification Credential (TWIC) impact on offshore facilities.

(7) Industry information on current costs and operations on OCS activities.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Designated Federal Officer no later than April 9, 2009. Written material for distribution at the meeting should reach the Coast Guard no later than April 9, 2009. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Designated Federal Officer no later than April 9, 2009.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the DFO as soon as possible.

Dated: March 16, 2009.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. E9–6418 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8103–5 AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Anvik, Alaska, and are located in:

Seward Meridian, Alaska

T. 31 N., R. 57 W.,
Sec. 19.
Containing 440.18 acres.
T. 28 N., R. 58 W.,
Secs. 5, 8, and 17;
Secs. 20 and 29;
Secs. 30, 31, and 32.
Containing 4,207.24 acres.
Aggregating 4,647.42 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 23, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert L. Lloyd,

Chief, Land Transfer Adjudication I.

[FR Doc. E9–6384 Filed 3–23–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement; Marin Headlands and Fort Baker Transportation Infrastructure and Management Plan Golden Gate National Recreation Area, Marin County, California; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 42 U.S.C. 4321–4347, January 1, 1970, as amended), and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement for the Marin Headlands and Fort Baker Transportation Infrastructure and Management Plan. The proposed project would provide greater access to and within the Marin Headlands and Fort Baker areas of Golden Gate National Recreation Area (GGNRA) for a variety of users in a way that minimizes impacts to the rich natural diversity and cultural resources within all the areas of potential effect. Roadway infrastructure would be rehabilitated or reconstructed with non-character altering roadway widening, and parking facilities would be improved. Additional transit options would be provided to and within the Marin Headlands and Fort Baker to improve access to visitor sites. Pedestrian and bicycle facilities would be improved through closure and rerouting of existing trails and construction of new trails.

A successful project would meet the following goals: (1) Promote public transit, pedestrian, and bicycle travel to and within GGNRA to improve visitor experience and enhance environmental quality; (2) Rehabilitate the Marin Headlands/Fort Baker transportation road and trail infrastructure in a manner that protects resources and improves safety and circulation; (3) Reduce traffic congestion at key park locations and connecting roads.

Range of Alternatives Considered: The Final Environmental Impact Statement (FEIS) describes and analyzes four alternatives. *Alternative 1,* the No Action Alternative, would provide no change from the existing management direction; it serves as an environmental baseline from which potential effects of the three ''action'' alternatives may be compared. *Alternative 2* would provide basic multi-modal access. Roadway infrastructure would be rehabilitated within the existing roadway width; parking facilities would be improved; transit service to the Marin Headlands would be expanded on weekends; and minor pedestrian and bicycle facility enhancements would be implemented to improve access to these GGNRA areas. *Alternative 4* would provide maximum multi-modal access. Roadway infrastructure would be reconstructed throughout the study area, and parking facilities would be improved. Transit options would be similar to those provided in the *Alternative 3* (agency-preferred), with the addition of connections to regional transit centers outside of GGNRA. Extensive pedestrian and bicycle facility enhancements would be implemented, including closure and rerouting of existing trails, construction of new trails, and road widening to allow for bicycle lane construction on nearly all major roads.

Alternative 3 (agency-preferred) would provide enhanced multi-modal access. Roadway infrastructure would be rehabilitated or reconstructed with non-character altering roadway widening, and parking facilities would be improved. Additional transit options would be provided to and within the Marin Headlands and Fort Baker (MH/FB) to improve access. Pedestrian and bicycle facilities would be improved through closure and rerouting of existing trails and construction of new trails. Key project elements include:

- Roadways and Vehicular Circulation: At selected sites within the area of potential effect, roads and intersections will be modified to improve safety and operations. Modifications include widening the road widths from two to four feet to allow for the provision of Class 2 bicycle lanes or improved safety on Class 3 bike routes, and reconstructing intersections from a ''Y'' to a ''T'' configuration. In addition the park would implement a wayfinding program and intelligent transportation system (ITS) technologies to improve visitor information and reduce traffic congestion at key locations.
- Parking Management and Fees: In many MH/FB locations parking areas would be reconfigured, delineated, and formalized, in order to improve parking operations, reduce congestion, better match parking supply with demand, and reduce natural resource impacts. A parking fee program would be implemented to provide enhanced transit service operations.
- Bicycle and Pedestrian Improvements: Class 1 bicycle path and Class 2 bicycle lanes would be added in several locations, and extensive improvements to pedestrian trails would be implemented. A new bicycle/pedestrian trail would be constructed to provide a separate facility connecting Fort Baker to the bike lanes at Barry-Baker tunnel and the Marin Headlands. Rodeo Valley Trail would be widened with a hardened surface between Capehart Housing and Bunker Road at Rodeo Lagoon to provide a Class 1 bicycle path and hiking trail. The Coastal Trail would be rerouted from its current interior Rodeo Valley alignment to a more coastal alignment with spectacular views.
- Transit Services: Existing transit services in the MH/FB area would be expanded to improve access to and within these areas. The goal of improved transit service would be to provide transit access seven days a week by expanding MUNI and Golden Gate Transit service on existing routes, and by implementing additional park shuttle service.
- Car-Free Days and Special Events: A car-free days program would be implemented on selected days on a trial basis—upon review of the program, the NPS may adjust the number of car-free days or the implementation times and operations. This program would allow visitors to experience the area with minimal vehicular traffic and would encourage visitors to use alternative modes of transportation to access and travel within GGNRA.
- Natural Resource Protection: Improvements designed to protect natural resources include: restoring the wetland community at the unpaved parking lot at Rodeo Beach; repair and restore gullies that have formed due to past poor drainage along Conzelman roadway; and remove fill and restore wetlands along Rodeo Lagoon/Lake along selected portions of Smith and Bunker Roads.

Changes Between Draft EIS and Final Eis: Several changes were made to the analysis following release of the Draft

EIS. Modifications included in the FEIS consist mostly of simple text revisions and technical edits. There are also both extensive text revisions to more clearly explain proposed actions or environmental impacts analysis, and minor changes to actions proposed in the agency-preferred alternative. The text edit changes were mostly a result of public comment on the Draft EIS. Chapter 6 of the FEIS summarizes the public comments and responds to the comments both within the chapter and in other chapters where appropriate. Some text was added that provided additional analysis. This additional analysis was mostly focused on two proposals within the analysis: the wetland restoration at the unpaved parking lot, and the Mission blue butterfly habitat compensation planned at Hawk Hill.

Project proposal changes included in *Alternative 3* are as follows:

- Rodeo Valley Connector Trail: Cyclists would be allowed on the trail between Conzelman Road north to Bunker Road. The trail starts east of Battery Rathbone-McIndoe on Conzelman Road, connecting to Bunker Road east of the riding stables; there would be multi-use by permit pedestrians, equestrians, and bicycles.
- Slacker Hill Trail: The existing trail from the top of Slacker Hill to the launch site would be downgraded from a road to a trail, providing access to the launch site for hikers and equestrians only. Access to the east side of the launch site would be maintained for its views of the bay and city.
- Hawk Hill Parking on Conzelman Road: In preparing the FEIS, the planning team observed parking utilization at Hawk Hill in the fall of 2007. These observations showed that demand for the parking spaces exceeds 25 spaces for week-end peak and shoulder seasons. Therefore, *Alternative 3* now includes a revised parking configuration at Hawk Hill, which is a modified version of the parking configuration provided in Alternative 4 (the same proposal is common to both alternatives).
- Smith Road Parking: The proposed parking area at Smith Road has been revised to mostly avoid the riparian area to the east. Under Alternative 3, Smith Road has been reduced in size and realigned to the south, moving it farther from Rodeo Creek and the riparian area along the creek.
- East Road and Bay Trail: Additional width will be provided where possible in the shoulder area for bicyclists, providing a balance between protecting the resources and improving bicyclists' safety and experience. The refined design includes 11-foot travel lanes in each direction and widened shoulders where practicable.

Scoping and Public Involvement: The Notice of Intent to prepare an EIS was published in the **Federal Register** on April 10, 2002. Early in the EIS scoping phase three public meetings were hosted in San Francisco, Marin City, and Oakland. The San Francisco meeting occurred on March 26, 2002 during a meeting of the park's Advisory Committee (approximately ten members of the public attended the meeting). The Marin City meeting occurred on April 10, 2002 at the Manzanita Community Center in Marin City (approximately 20 members of the public attended). The Oakland meeting occurred on April 11, 2002 at the Metropolitan Transportation Commission Auditorium in Oakland. Three members of the public attended, along with several agency staff members. In addition GGNRA held two Alternatives Refinement Workshops for the public. The primary goal of these meetings was to solicit public input on the four preliminary alternatives. The meetings were held on November 19, 2002 at Tamalpais High School in Mill Valley (approximately 11 community members attended) and on November 26, 2002 at GGNRA Headquarters in San Francisco (approximately 15 community members attended). GGNRA staff prepared and distributed announcements of the meetings to 2,000 individuals and organizations (and these were also distributed at Marin Headlands Visitor Center and posted widely on bulletin boards in Marin County). Summaries of the comments received at each workshop and written comments from the public were documented in a 2003 memorandum titled ''Summary of November 2002 Alternatives Refinements Workshops''. Workshop comments were used to further refine the alternatives and identify the main issues to be addressed in finalizing the alternatives to be presented in the Draft EIS. The park also hosted a public forum March 14, 2003 to review initial findings of the Fort Baker Cultural Landscape Report and Marin Headlands/Fort Baker Historic Roads Characterization Study (two members of the public attended). The most recent public outreach efforts included presenting project alternatives at the last four of the park's quarterly public meetings beginning with the May 16, 2006 meeting at the Mill Valley Community Center. Regular posting of information updates occurs on the park's Web site (*http://parkplanning.nps.gov/goga*).

The park's Notice of Availability for the Draft EIS was published in the **Federal Register** on June 12, 2007 (the 60-day public review period was formally initiated June 8, 2007 when the EPA notice of filing appeared in the **Federal Register**); public comment was accepted through August 13, 2007. In an effort to solicit public awareness an extensive public notification effort was done for the release of the Draft EIS, including letters, post cards mailers, newspaper public notices, and posting on the park's Web site. A public meeting was held in Sausalito, CA on July 18, 2007 where the park hosted an open house and answered questions from the public. The public meeting was attended by approximate 80 people and was covered by San Francisco local television KTVU. Several media (radio, television, newspapers) reported on the project during the public review and comment period. Public correspondence was accepted electronically and via fax or letter; a total of 321 correspondences were received on the Draft EIS.

Approval Process: The National Park Service will prepare a Record of Decision no sooner than 30 days following EPA's notice of filing of the FEIS in the **Federal Register**. The document is available for public inspection as follows: at the Office of the Superintendent (Bldg. 201 Fort Mason, San Francisco, California), and at local public libraries (Marin County Free Library, Mill Valley, Point Reyes, and Sausalito). An electronic version may be accessed at *http://parkplanning.np.gov/goga*. Copies may also be obtained by contacting Mr. Steve Ortega, (415) 561–2841 or *steve_ortega@nps.gov*. As a delegated EIS, the official responsible for approval of the Marin Headlands and Fort Baker Transportation Infrastructure and Management Plan is the Regional Director, Pacific West Region; subsequently the official responsible for implementing the final plan would be the Superintendent, Golden Gate National Recreation Area.

Dated: December 11, 2008.

George J. Turnbull,

Acting Regional Director, Pacific West Region, National Park Service.

Editorial Note: This document was received in the Office of the Federal Register on Thursday, March 19, 2009.

[FR Doc. E9–6414 Filed 3–23–09; 8:45 am]

BILLING CODE 4312–FN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fort Dupont Park, National Capital Parks—East, Washington, DC; Notice of Availability of a Finding of No Significant Impact for the Proposed Transfer of Jurisdiction of a Portion of Fort Dupont Park, Washington, DC

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Finding of No Significant Impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and National Park Service (NPS) NEPA guidelines, NPS prepared and in October 2008 made available for a 30-day public review an Environmental Assessment (EA) evaluating the potential impacts of a proposed transfer of jurisdiction of a portion of Fort Dupont Park to the Government of the District of Columbia (the District). This transfer would be for recreational purposes and in assessing this proposed transfer, the EA also considered the District's general plan to expand and improve sports-related recreational facilities to the extent that these details are presently known.

After the end of the 30-day public review period, the NPS selected for implementation, the preferred alternative as described in the EA, and determined it will not have a significant impact on the quality of the human environment and that an Environmental Impact Statement is not required. In making that selection and determination, the NPS considered the information and analysis contained in the EA and the comments received during the public review period. The NPS has accordingly prepared a Finding of No Significant Impact (FONSI) for the proposed transfer. The FONSI is also accompanied by an errata sheet that corrected some minor inaccuracies and updated some information.

The errata did not result in any changes in the overall findings of the EA and had no bearing on its determination of no significant impact.

FOR FURTHER INFORMATION CONTACT: Gayle Hazelwood, Superintendent, National Capital Parks—East, RE: Fort Dupont Park Land Transfer Proposal, at 1900 Anacostia Drive, SE., Washington, DC 20020, by telephone at (202) 690–5127, or by e-mail at *gayle_hazelwood@nps.gov*.

SUPPLEMENTARY INFORMATION: The selected alternative would transfer jurisdiction of an approximate 15-acre parcel at one end of Fort Dupont Park (the Project Area) to the District to facilitate the improvement and expansion of recreational facilities located there. The transfer would result in the District taking over management of the Project Area and then improving and expanding the sports-related recreational facilities including the development of a Youth Baseball Academy and the expansion of the Fort Dupont Ice Arena. Pursuant to the transfer, all NPS managerial responsibilities for the Project Area, including the Fort Dupont Ice Arena which the NPS leases to the Friends of Fort Dupont Ice Arena, Inc., will be transferred to the District, and the Project Area will no longer be a part of Fort Dupont Park. The transfer will also necessitate amending the NPS' 2004 Fort Circle Parks Management Plan which provides a managerial framework for decisions about use and development within the Fort Circle Parks, including Fort Dupont Park.

Although the NPS proposes making this transfer, for it to occur not only must the NPS and District agree to the terms, the National Capital Planning Commission must recommend it.

The FONSI and other documents related to this action are available for review electronically on the NPS's Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/NACE.* You may also request a hard copy at (202) 690–5127.

Dated: January 14, 2009.

Margaret O'Dell,

Regional Director, National Capital Region.

[FR Doc. E9–6212 Filed 3–23–09; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–671]

In the Matter of Certain Digital Cameras; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 17, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Samsung Electronics Co., Ltd. of Korea and Samsung Electronics America, Inc. of Ridgefield Park, New Jersey. Letters supplementing the Complaint were filed on February 27, 2009 and March 11, 2009. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital cameras by reason of infringement of certain claims of U.S. Patent Nos. 5,731,852 and 6,229,695. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2767.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2008).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 18, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital cameras that infringe one or more of claims 1, 2, 6, 8, and 9 of U.S. Patent No. 5,731,852 and claims 1–3, 5, 6, 8–11, and 19 of

U.S. Patent No. 6,229,695, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Samsung Electronics Co., Ltd., 416 Maetan-3dong, Yeongtong-gu, Suwon-city, Gyeonggi-do, Korea 443–742.

Samsung Electronics America, Inc., 105 Challenger Road, Ridgefield Park, NJ 07660.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Eastman Kodak Company, 343 State Street, Rochester, NY 14650.

(c) The Commission investigative attorney, party to this investigation, is Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: March 19, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–6415 Filed 3–23–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Notice is hereby given that on March 13, 2009, a proposed Settlement Agreement Regarding Miscellaneous Federal and State Environmental Sites was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re ASARCO LLC, et al.*, Case No. 05–21207 (Bankr. S.D. Tex.). The Settlement provides the United States with an allowed general unsecured claim in the amount indicated for each of the following Sites: The Tacoma Site—Operable Units (''OU'') 02, 04, and 06 of the Commencement Bay Nearshore Tideflats Superfund Site in and around Tacoma and Ruston, Washington, $27,000,000; the Circle Smelting Site—a former zinc smelter facility located in the Village of Beckemeyer, Illinois, $6,052,390; the Terrible Mine Site—a 44-acre former lead mining and milling site located in the Old Isle Mining District of Custer County, Colorado, $1,400,000; Stephenson/Bennett Mine Site—a 150-acre former mining and milling area in Doña Ana County, New Mexico, $550,000; the Coy Mine Site—a zinc mine in Jefferson County, Tennessee, $200,000; the Richardson Flat Tailings Site—a 160-acre former mine tailings impoundment and the Lower Silver Creek area in Summit County, Utah, $7,400,000; the Jack Waite Mine Site—several mine adits, a former mill site, four tailings ponds, and one or more waste rock piles located on land administered by the Forest Service in the Coeur d'Alene National Forest east of Prichard, Idaho, $11,300,000; the Black Pine Mine Site—mill tailings, a large mine waste rock dump, a seep, and associated wastes located on land administered by the Forest Service in the Beaverhead-Deerlodge National Forest northwest of Philipsburg, Montana, $190,000; the Combination Mine Site—a tailings pond and associated wastes in Lower Willow Creek located on land administered by the Forest Service in the Beaverhead-Deerlodge National Forest northwest of Philipsburg, Montana, $542,000; the Flux Mine Site—a former zinc and silver mine and associated mine adits and waste rock dumps located on land administered by the Forest Service in the Coronado National Forest southeast of Patagonia, Arizona, $487,000; the International Boundary Water Commission (''IBWC'') Site—the American Dam and Canal portion of the Rio Grande Canalization Project and the American Dam Field Office in El Paso, Texas, $19,000,000; the Monte Cristo Mining District Site—a historic mining district including mines, mill facilities, adits, and waste piles located partly on land administered by the Forest Service within the Mt. Baker-Snoqualmie National Forest, in Snohomish County, Washington, $5,500,000 (the Settlement also provides the State of Washington an allowed general unsecured claim of $5,500,000 for this Site); the Vasquez Boulevard/I–70 Site—a historic smelter and the residential areas surrounding it, comprising OU1, OU2, and OU3 of the Vasquez Boulevard/Interstate–70 Superfund Site, in north-central Denver, Colorado, $1,500,000.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, comments should refer to *In re Asarco LLC*, Case No. 05–21207 (Bankr. S.D. Tex.), D.J. Ref. No. 90–11–3–08633. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Settlement Agreement may be examined at: the Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Chrsti, TX 78476–2001; the Region 4 Office of the United States Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104; the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3507; the Region 6 Office of the United States Environmental Protection Agency, Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733; the Region 8 Office of the United States Environmental Protection Agency, 1595 Wynkoop St., Denver, CO 80202–1129; and the Region 10 Office of the United States Environmental Protection Agency, 1200 Sixth Avenue Suite 900, Seattle, WA 98101. During

the comment period, the proposed Settlement Agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Settlement Agreement may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.50 for the Settlement Agreement without attachments or $7.50 for the Settlement Agreement with attachments (25 cents per page reproduction costs) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. E9–6448 Filed 3–23–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on March 13, 2009, a proposed Consent Decree and Settlement Agreement regarding certain sites in Montana was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Asarco LLC*, No. 05–21207 (Bankr. S.D. Tex.). The proposed Agreement entered into by the United States on behalf of the Environmental Protection Agency (EPA), the United States Department of the Interior (DOI), the state of Montana, and Asarco LLC provides, *inter alia*, for the establishment of a custodial trust, the transfer of certain properties to that trust, and funding of the trust with allowed administrative expense claims for administrative and site cleanup and restoration costs. The proposed Agreement provides the custodial trust with an allowed administrative expense claim of $8.9 million to cover its administrative costs and allowed administrative expense claims in the amount indicated for each of the following Sites to fund cleanup work: the Black Pine site, consisting of property owned by Asarco at or near the Black Pine Mine complex near Phillipsburg, Montana—$17.5 million, the Mike Horse site, consisting of property owned by Asarco at portions of the Upper Blackfoot Mining Complex near Lincoln, Montana—$10 million, the Iron Mountain site, consisting of property owned by Asarco at portions of the Iron Mountain/Flat Creek Mine complex near Superior, Montana—$1.9 million, and the East Helena site, consisting of all property owned by Debtors at or near East Helena, Montana—$100 million. The proposed settlement also includes an allowed general unsecured claim of $5 million to Montana for compensatory natural resource damages.

The Department of Justice will receive comments relating to the proposed Agreement for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Asarco LLC*, DJ Ref. No. 90–11–3–08633. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Agreement may be examined at the Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Christi, TX 78476–2001, or at the office of the Environmental Protection Agency Region 8, 1595 Wynkoop, Denver, Colorado 80202. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $15.50 (without attachments) or $39.00 (with attachments) (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. E9–6443 Filed 3–23–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on March 13, 2009, a proposed Settlement Agreement and Consent Decree Establishing a Custodial Trust for Certain Owned Sites in Alabama, Arizona, Arkansas, Colorado, Illinois, Indiana, New Mexico, Ohio, Oklahoma, Utah and Washington was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Asarco LLC,* No. 05–21207 (Bankr. S.D. Tex.). The proposed Agreement entered into by the United States on behalf of the Environmental Protection Agency (EPA), several states, and Asarco LLC provides, *inter alia,* for the establishment of a custodial trust, the transfer of certain properties to that trust, and funding of the trust with allowed administrative expense claims totaling $70,955,493 for administrative and site cleanup costs. The proposed Agreement covers the following sites: Ragland Site in St Clair County, Alabama; Sacaton near Casa Grande, Arizona; Trench Mine and Salero Sites near Patagonia and Rio Rico, Arizona; Van Buren Site in Crawford County, Arkansas; Silverton Site in San Juan County, Colorado; Globe Site in Adams and Denver Counties, Colorado; Alton Site in Madison County, Illinois; Taylor Springs Site in Taylor Springs, Illinois; Beckemeyer Site in Clinton County, Illinois; Whiting Site in Lake County, Indiana; Deming Site in Luna County, New Mexico; Magdalena Site in Soccorro County, New Mexico; Columbus/Blue Tee Site in Franklin County, Ohio; Sand Springs Site in Tulsa County, Oklahoma; Gold Hill Site in Toole County, Utah; Belshazzar Site in Salt Lake County, Utah; Murray Site in Salt Lake County, Utah; and McFarland Site in Pierce County, Washington.

The Department of Justice will receive comments relating to the proposed Agreement for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General,

Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Asarco LLC,* DJ Ref. No. 90–11–3–08633. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Agreement may be examined at the Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Christi, TX 78476–2001, at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3507; the Region 8 Office of the United States Environmental Protection Agency, 1595 Wynkoop St., Denver, CO 80202–1129; or at the Region 10 Office, 1200 Sixth Avenue, Seattle, Washington 98101. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.00 (without attachments) or $37.75 (with attachments) (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. E9–6446 Filed 3–23–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on March 13, 2009, a proposed Settlement Agreement and Consent Decree regarding the Bunker Hill Mining and Metallurgical Complex Superfund Site, also known as the Coeur d'Alene Basin Site in Idaho, and the Omaha Lead Site in Nebraska was filed with the United States Bankruptcy Court for the Southern District of Texas in *In re Asarco LLC,* No. 05–21207 (Bankr. S.D. Tex.). The proposed Agreement entered into by the United States on behalf of the Environmental Protection Agency (EPA), Department of Interior (DOI), and Department of Agriculture Forest Service (FS) and Asarco LLC provides, *inter alia,* that (A) with respect to the Coeur d'Alene Basin Site, (1) the United States on behalf of EPA shall have an allowed general unsecured claim of $41.464 million for past costs and future oversight costs, (2) the Successor Coeur d'Alene Custodial and Work Trust shall have an allowed general unsecured claim of $359.179 million to perform work, (3) the Successor Coeur d'Alene Custodial and Work Trust shall receive certain land currently owned by the Debtors and a $14 million allowed administrative expense claim to perform work on those lands, and (4) the United States on behalf of DOI and FS, as co-Natural Resources Trustees, shall have an allowed general unsecured claim of $67.5 million, and (B) with respect to the Omaha Lead Site, the United States on behalf of EPA shall have an allowed general unsecured claim of $186.5 million.

The Department of Justice will receive comments relating to the proposed Agreement for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *In re Asarco LLC,* DJ Ref. No. 90–11–3–08633. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Agreement may be examined at the Office of the United States Attorney for the Southern District of Texas, 800 North Shoreline Blvd, #500, Corpus Christi, TX 78476–2001, at the office of the Environmental Protection Agency Region 7, 901 North Fifth Street, Kansas City, Kansas 66101, or at the office of the Environmental Protection Agency Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.00 (without attachments) or $37.75 (with attachments) (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. E9–6447 Filed 3–23–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 3, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 3, 2009.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment

and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 18th day of March, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

TAA Petitions Instituted between 2/16/09 and 2/20/09

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65256	Pine Hosiery Mills, Inc. (Comp)	Star, NC	02/17/09	02/13/09
65257	The Crown Group (Comp)	Detroit, MI	02/17/09	01/13/09
65258	Shape Corporation (Comp)	Grand Haven, MI	02/17/09	02/16/09
65259	Chemical Coatings, Inc. (Comp)	Hudson, NC	02/17/09	02/13/09
65260	McCreary Modern, Inc. Plant #1 (Comp)	Newton, NC	02/17/09	02/13/09
65261	Dunbar Enterprise, Inc. (IAMAW)	Snohomish, WA	02/17/09	01/30/09
65262	U.S. Steel Tubular Products, Inc. (USW)	Lone Star, TX	02/17/09	02/15/09
65263	Kimbal Office (Wkrs)	Bordon, IN	02/17/09	02/13/09
65264	Auto Truck Transport (Wkrs)	Mt. Holly, NC	02/17/09	02/13/09
65265	Advanced Energy Industries, Inc.—Austin (Comp)	Austin, TX	02/17/09	02/13/09
65266	Advanced Energy Industries, Inc.—Vancouver (Comp)	Vanouver, WA	02/17/09	02/13/09
65267	Advanced Energy Industries, Inc. (Comp)	San Jose, CA	02/17/09	02/13/09
65268	PHB Machining Division (Comp)	Fairview, PA	02/17/09	02/09/09
65269	Bates Acquisition, LLC (Comp)	Lobelville, TN	02/17/09	02/17/09
65270	St. Clair Plastics Company (IAMAW)	Chesterfield Twp., MI	02/17/09	02/13/09
65271	ACS Cumberland Engineering (Wkrs)	South Attleboro, MA	02/17/09	01/27/09
65272	The Timken Company (State)	Cairo, GA	02/17/09	02/12/09
65273	Sherico Cedar Products (Wkrs)	Forks, WA	02/17/09	02/02/09
65274	Delaco Steel (Comp)	Dearborn, MI	02/17/09	02/13/09
65275	Alcatel—Lucent (Wkrs)	Westford, MA	02/17/09	01/29/09
65276	The Mitchell Gold and Bob Williams Co. (Wkrs)	Taylorsville, NC	02/17/09	02/13/09
65277	Carrollton Specialty Products (Wkrs)	Moberly, MO	02/17/09	02/12/09
65278	Beck Tool Incorporated (Comp)	Edinboro, PA	02/18/09	02/17/09
65279	Lenoir Mirror Company (Comp)	Lenoir, NC	02/18/09	02/12/09
65280	Eaton Corporation (Comp)	Mentor, OH	02/18/09	02/12/09
65281	Acument Global Technologies (Comp)	Fenton, MI	02/18/09	02/06/09
65282	Grand Rapids Control (Comp)	Rockford, MI	02/18/09	02/17/09
65283	Product Action (Wkrs)	Princeton, IN	02/18/09	02/17/09
65284	Oakhurst Textiles, Inc. (Comp)	Browns Summit, NC	02/18/09	02/17/09
65285	May and Scofield (Comp)	Fowlerville, MI	02/18/09	02/16/09
65286	Ford Motor Company/Sterling Axle Plant (UAW)	Sterling Heights, MI	02/18/09	01/17/09
65287	Doe Run Company (The) (State)	St. Louis, MO	02/18/09	01/29/09
65288	Caliber Auto Transfer of Detroit, Wayne Yard (State)	Edmond, OK	02/18/09	01/23/09
65289	Parkdale Mills, Inc. (Comp)	Gastonia, NC	02/18/09	02/17/09
65290	Paragon Molds Corporation (State)	Fraser, MI	02/18/09	01/17/09
65291	Bassett Furniture Outlet (Wkrs)	Bassett, VA	02/18/09	02/18/09
65292	Sunright/KESI (Wkrs)	Tempe, AZ	02/18/09	02/05/09
65293	Bowe Industries (Wkrs)	Glendale, NY	02/18/09	02/01/09
65294	Iowa Precision Ind. (Wkrs)	Cedar Rapids, IA	02/18/09	02/17/09
65295	Jeld-Wen-Hawkin's Windows Div. (Wkrs)	Hawkins, WI	02/18/09	02/16/09
65296	ITW IMPRO (Wkrs)	Mokena, IL	02/19/09	02/18/09
65297	Hewlett Packard Caribe, BV, LLC (State)	Aguadilla, PR	02/19/09	02/18/09
65298	Ferraz Shawmut, LLC (Comp)	Newburyport, MA	02/19/09	02/04/09
65299	United States Steel Great Lakes Works (USW)	Ecorse, MI	02/19/09	02/18/09
65300	Tube City IMS, Inc. (USW)	Ecorse, MI	02/19/09	02/18/09
65301	Richland Manufacturing (State)	Olney, IL	02/19/09	02/18/09
65302	Miller Products Corporation (Comp)	Grand Rapids, MI	02/19/09	02/06/09
65303	Hospira, Inc. (Comp)	Morgan Hill, CA	02/19/09	02/13/09
65304	Tecumseh Power Company—Dunlap Ops (Comp)	Dunlap, TN	02/19/09	02/02/09
65305	Samuel Steel Pickling Company (Wkrs)	Twinsburg, OH	02/19/09	02/17/09
65306	Product Action International, LLC (Wkrs)	Indianapolis, IN	02/19/09	02/18/09
65307	Syris Technologies (USW)	Kenton, OH	02/19/09	01/30/09
65308	Edscha-NA (Jackson Automotive) (Wkrs)	Pontiac, MI	02/19/09	02/04/09
65309	ITW Paslode (Comp)	Terrell, TX	02/19/09	02/18/09
65310	Micro Tool and Manufacturing, Inc. (Comp)	Meadville, PA	02/19/09	02/19/09
65311	Caterpillar, Inc. (UAW)	Peoria, IL	02/19/09	02/04/09
65312	Brown Shoe (Union)	Fredericktown, MO	02/19/09	02/10/09
65313	Delphi Packard Electric System (IUECWA)	Warren, OH	02/19/09	02/16/09
65314	Kennametal, Inc. (UE)	Greenfield, MA	02/19/09	01/26/09
65315	Davis International (Wkrs)	West Point, MS	02/19/09	02/13/09
65316	Paige Electric Company, L.P. (Comp)	McConnellsburg, PA	02/20/09	02/19/09
65317	Greenkote IPC (SEIU)	St. Louis, MO	02/20/09	02/19/09
65318	Americas Styrenics (USW)	Marietta, OH	02/20/09	02/19/09
65319	Maxcess International/Tidland Corp (Wkrs)	Camas, WA	02/20/09	02/18/09

APPENDIX—Continued

TAA Petitions Instituted between 2/16/09 and 2/20/09

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
65320	Auto Truck Transport (IAMAW)	Portland, OR	02/20/09	02/19/09
65321	Siemens E & A Inc. (Comp)	Urbana, OH	02/20/09	02/19/09
65322	Dodger Industries, Inc. (Comp)	Eldora, IA	02/20/09	02/18/09
65323	Woodbridge Corporation (Union)	Brodhead, WI	02/20/09	02/16/09
65324	General Aluminum Manufacturing Co. (Comp)	Richmond, IN	02/20/09	02/17/09
65325	Amphenol Backplane Systems (Comp)	Nashua, NH	02/20/09	02/20/09

[FR Doc. E9–6290 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,572]

BHp Billiton, BHP Copper, Inc., Pinto Valley Operations & San Manuel Arizona Railroad Company, Miami, AZ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 12, 2009 in response to a petition filed by a company official on behalf of the workers at BHp Billiton, BHP Copper, Inc., Pinto Valley Operations & San Manuel Arizona Railroad Company, Miami, Arizona.

The petitioning group of workers is covered by an earlier petition TA–W–65,447 filed on February 27, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore, the investigation under this petition has been terminated. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6289 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,354]

American Pride, LLC, Guilford, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2009 in response to a worker petition filed by a company official on behalf of workers of American Pride, LLC, Guilford, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6303 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,155]

Bledsoe Construction, Inc., Boise, ID; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 6, 2009 in response to a petition filed by a company official on behalf of workers of Bledsoe Construction, Inc., Boise, Idaho.

The petitioning group of workers is covered by an active certification, (TA–W–61,811) which expires on September 13, 2009. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of February 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6295 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,410]

Century Aluminum of West Virginia, Inc., Ravenswood, WV; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2009 in response to a worker petition filed by the United Steelworkers of America, Local 5668, on behalf of workers of Century Aluminum of West Virginia, Inc., Ravenswood, West Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6307 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,429]

Cenveo Cadmus Communications, Ephrata, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2009 in response to a petition filed on behalf of workers of Cenveo Cadmus

Communications, Ephrata, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6310 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,977]

Circuit Check Inc., Maple Grove, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 23, 2009 in response to a petition filed by a company official on behalf of workers of Circuit Check Inc., Maple Grove, Minnesota.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 13th day of March, 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6292 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,237]

CMH Manufacturing, Inc.; Clayton-Ardmore Division; Ardmore, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 12, 2009, in response to a worker petition filed by a company official on behalf of workers at CMH Manufacturing, Inc., Clayton-Ardmore Division, Ardmore, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6298 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,109]

Fortis Plastics, LLC, Fort Smith, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2009 in response to a worker petition filed by the Rapid Response Coordinator for the State of Arkansas on behalf of workers of Fortis Plastics, LLC, Fort Smith, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March, 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6294 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,366]

Hewlett Packard Company; Business Critical Systems Mission Critical Business Software Division Open VMS Operating System Development Group Including Employees Working Off Site In New Hampshire, Florida, New Jersey, Colorado, and Marlborough, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 25, 2009 in response to a petition filed by the California State TAA Coordinator on behalf of the workers at Hewlett Packard Company, Business Critical Systems—Mission Critical Business Software Division, Open VMS Operating System Development Group, Marlborough, Massachusetts, including employees working off-site in New Hampshire, Florida, New Jersey, and Colorado.

The petition regarding the investigation has been deemed invalid. State representatives can only submit petitions on behalf of workers previously employed in their respective states. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of March 2009.

Richard Church

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6305 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,481]

IM Flash Technologies, LLC., a Joint Venture of Micron Technology Inc., and Intel Corportation, Lehi, UT; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4, 2009 in response to a worker petition filed by three workers on behalf of workers of IM Flash Technologies, Lehi, Utah, a joint venture of Micron Technologies Inc., and Intel Corporation.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 12th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6314 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,390]

Janesville Acoustics; Norwalk, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2009 in response to a petition filed by Chicago Midwest Regional Joint Board on behalf of the workers of Janesville Acoustics, Norwalk, Ohio.

The petitioning group of workers is covered by an earlier petition (TA–W–65,077) filed on January 27, 2009 that is

the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 12th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6306 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,443]

Johnson Controls; Columbia, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 2, 2009 in response to a petition filed by a company official on behalf of workers of Johnson Controls, Columbia, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6312 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,336]

Kennametal, Inc., Latrobe, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2009, in response to a worker petition filed on behalf of workers at Kennametal, Inc., Latrobe, Pennsylvania.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6301 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,798]

Maverick Tube LLC, dba Tenaris Hickman, Blytheville, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 31, 2008, in response to a worker petition filed by the State of Arkansas on behalf of workers at Maverick Tube LLC, dba TenarisHickman, Blytheville, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 12th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6291 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,206]

Millinocket Fabrication and Machine Inc., Millinocket, ME; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 10, 2009 in response to a petition filed by a company official on behalf of workers of Millinocket Fabrication and Machine Inc., Millinocket, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 13th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6297 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,350]

PIHT, LLC, St. Marys, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2009, in response to a worker petition filed by a company official on behalf of workers at PIHT, LLC, St. Marys, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6302 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,193]

Prime Tanning Company, Hartland, ME; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 9, 2009 in response to a petition filed by a company official on behalf of workers of Prime Tanning Company, Hartland, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 13th day of March, 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6296 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,485]

Sapa HE Tubing, Louisville, KY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4,

2009 in response to a petition filed by the United Steelworkers of America, Local 155, on behalf of workers of Sapa HE Tubing, Louisville, Kentucky.

The petitioner has requested that the petition be withdrawn. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 13th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6315 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,075]

Senco Products, Inc., Cincinnati, OH; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 3, 2009 in response to a petition filed by a company official on behalf of workers of Senco Products, Inc., Cincinnati, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 13th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6293 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,422]

Sun-Times News Group, Advertising Division, Merrillville, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2009, in response to a worker petition filed by a company official on behalf of workers at Sun-Times News Group, Advertising Division, Merrillville, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 13th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6309 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,480]

Tech Group, Van Buren, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 4, 2009 in response to a petition filed by a State agency representative on behalf of workers of Tech Group, Van Buren, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6313 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,239]

Three Rivers Timber, Inc., Kamiah, ID; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 12, 2009 in response to a worker petition filed by a company official on behalf of workers of Three Rivers Timber, Inc., Kamiah, Idaho.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of March 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6299 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,243]

TMD Friction, Inc., Dublin, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 13, 2009 in response to a petition filed by a company official on behalf of workers of TMD Friction, Inc., Dublin, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March 2009.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6300 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,441]

Triumph Apparel Corporation, York Manufacturing and York DC, a Subsidiary of Triumph Apparel Corporation, York, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 2, 2009 in response to a petition filed by a company official on behalf of workers of Triumph Apparel Corporation, York Manufacturing and York DC, a subsidiary of Triumph Apparel Corporation, York, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6311 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,417]

Virage Logic Corporation, Hampton, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2009 in response to a worker petition filed on behalf of workers at Virage Logic Corporation, Hampton, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 11th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6308 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,356]

Wheatland Tube Company, Sharon, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2009 in response to a petition filed by the United Steel Workers, Local 1016–00, on behalf of workers of Wheatland Tube Company, Sharon, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–6304 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, 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. 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 requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of ''General Inquiries to State Agency Contacts.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before May 26, 2009.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics (BLS) awards funds to State agencies in the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands, hereinafter referred to as the ''States'') in order to jointly conduct BLS/State Labor Market Information and Occupational Safety and Health Statistics cooperative statistical programs, which themselves have been approved by OMB separately, as follows:

Current Employment Statistics	1220–0011
Local Area Unemployment Statistics	1220–0017
Occupational Employment Statistics	1220–0042
Quarterly Census of Employment and Wages Report	1220–0012
Annual Refiling Survey	1220–0032
Labor Market Information Cooperative Agreement	1220–0079
Multiple Worksite Report	1220–0134
Mass Layoff Statistics	1220–0090
Annual Survey of Occupational Injuries and Illnesses	1220–0045
Census of Fatal Occupational Injuries	1220–0133
BLS/OSHS Federal State Cooperative Agreement	1220–0149

(This list of BLS/State cooperative statistical programs may change over time.)

To ensure the timely flow of data and to be able to evaluate and improve the programs, it is necessary to conduct ongoing communications between the BLS and its State partners. Whether information requests deal with program deliverables, program enhancements, or administrative issues, questions and dialogue are crucial to the successful implementation of these programs.

II. Current Action

Office of Management and Budget clearance is being sought for the General Inquiries to State Agency Contacts. Information collected under this clearance is used to support the administrative and programmatic needs of jointly conducted BLS/State Labor Market Information and Occupational Safety and Health Statistics cooperative statistical programs.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• 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 submissions of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: General Inquiries to State Agency Contacts.

OMB Number: 1220–0168.

Affected Public: State, local, or Tribal Government.

Total Respondents: 54.

Frequency: As needed.

Total Responses: 23,890.

Average Time per Response: 40 minutes.

Estimated Total Burden Hours: 15,927.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $0.

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 also will become a matter of public record.

Signed at Washington, DC, this 18th day of March 2009.

Kimberley D. Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E9–6341 Filed 3–23–09; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–031)]

National Environmental Policy Act; Wallops Flight Facility Shoreline Restoration and Infrastructure Protection Program

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and to conduct scoping for the Wallops Flight Facility Shoreline Restoration and Infrastructure Protection Program (SRIPP).

SUMMARY: Pursuant to the National Environmental Policy Act, as amended, (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA's NEPA policy and procedures (14 CFR Part 1216, subpart 1216.3), NASA intends to prepare an EIS for the implementation of a long-term SRIPP at Wallops Flight Facility (WFF). The U.S. Minerals Management Service (MMS) and the U.S. Army Corps of Engineers, Norfolk District, have been asked to participate as Cooperating Agencies as they possess both regulatory authority and specialized expertise pertaining to the Proposed Action. MMS has recently accepted NASA's request and will serve as a Cooperating Agency in the preparation of this EIS.

In May 2007, NASA released for public comment a *Draft Programmatic Environmental Assessment for Goddard Space Flight Center's Wallops Flight Facility, Shoreline Restoration and Infrastructure Protection Program.* Since that time, NASA's Proposed Action has changed and NASA will now prepare an EIS for the Proposed Action currently under consideration.

The SRIPP would be implemented to restore the Wallops Island shoreline and to protect the over $800 million in Federal and state assets on Wallops Island that are increasingly at risk from larger than normal storm events, storm waves, and flooding damage. The design and implementation of a solution to provide Wallops Island infrastructure with the necessary protection from both storm energy and flooding form the basis of the Proposed Action and alternatives to be analyzed in the WFF SRIPP EIS. The project's design lifespan would be fifty (50) years. The No Action Alternative is to not implement the WFF SRIPP, but to continue making emergency repairs to the Wallops Island shoreline as necessary.

NASA will hold a public scoping meeting as part of the NEPA process associated with the development of the EIS. The public meeting location and date identified at this time are provided under **SUPPLEMENTARY INFORMATION** below.

DATES: Interested parties are invited to submit comments on environmental issues and concerns, preferably in writing, on or before May 11, 2009, to assure full consideration during the scoping process.

ADDRESSES: Comments submitted by mail should be addressed to 250/NEPA Manager, WFF Shoreline Restoration and Infrastructure Protection Program, NASA Goddard Space Flight Center's Wallops Flight Facility, Wallops Island, Virginia 23337. Comments may be submitted via e-mail to *wff_shoreline_eis@majordomo.gsfc.nasa.gov*.

FOR FURTHER INFORMATION CONTACT: WFF Shoreline Restoration and Infrastructure Protection Program EIS by e-mail addressed to *wff_shoreline_eis@majordomo.gsfc.nasa.gov* or by mail addressed to 250/NEPA Manager, WFF Shoreline Restoration and Infrastructure Protection Program, NASA Goddard Space Flight Center's Wallops Flight Facility, Wallops Island, Virginia 23337. Additional information about the WFF Shoreline Restoration and Infrastructure Protection Program and NASA's NEPA process may be found on the internet at *http://sites.wff.nasa.gov/code250/shoreline_eis.html*.

SUPPLEMENTARY INFORMATION: WFF is a NASA Goddard Space Flight Center field installation located in Accomack County on the Eastern Shore of Virginia. As the oldest active launch range in the continental United States and the only range completely under NASA management, WFF has launched over 15,000 orbital and suborbital rockets since its operations began in the early 1940s.

WFF consists of three distinct landmasses totaling nearly 2,630 hectares (6,500 acres)—the Main Base, Wallops Mainland, and Wallops Island. To meet the safety and technical requirements of its various missions, many of WFF's primary launch support facilities reside on Wallops Island (island) which is located directly on the Atlantic Ocean. Even prior to NASA's presence on the island, the landmass has been subject to the effects of shoreline retreat, with measured losses averaging approximately 3.7 meters (12.2 feet) per year since 1857. Since the early 1960s, NASA has implemented several shoreline protection projects on the island that have included construction of wooden groins perpendicular to its shoreline, construction of a rock armor seawall parallel to its shoreline, and placement of dredged material along its shorefront. Despite these efforts, the ocean has continued to encroach substantially toward launch pads, infrastructure, and test and training facilities belonging to NASA, the U.S. Navy, and the Mid-Atlantic Regional Spaceport. In calendar years 2006 and 2007, NASA prepared a Draft SRIPP Programmatic Environmental Assessment to assess a wide variety of shoreline protection and flood control measures on the island. After receiving public comment and carefully considering the objectives of the project, NASA has since modified

its Proposed Action and is now preparing an EIS.

At present, the severity of the island's shoreline retreat could cause the interruption of missions supported by the facility and/or permanent loss of capabilities. The SRIPP would help reduce the risk to infrastructure on Wallops Island by restoring the shoreline or providing flood protection for infrastructure on the island.

NASA's Proposed Action would involve an initial construction phase with follow-on maintenance cycles. The initial construction phase would include three distinct elements:

1. Extending its existing rock seawall a maximum of 1,372 meters (4,500 feet) south of its southernmost point;

2. Constructing a rock groin perpendicular to the shoreline in the vicinity of the island's southernmost property boundary; and

3. Placing approximately 2,293,664 cubic meters (three (3) million cubic yards [MCY]) of fill material dredged from either of two shoals located offshore in Federal waters.

The seawall extension would likely be implemented first and would consist of the placement of 1.8–3.6 metric ton (two (2) to four (4) ton) rocks parallel to the island shoreline. Groin construction would likely follow seawall extension and would involve the placement of like-sized rocks perpendicular to the shoreline at approximately the point where Wallops Island meets Assawoman Island. Sand placement would be the final stage of the project and would likely involve removing sand from one of two shoals by hopper dredge and pumping the material onto the beach. Fill placement would likely occur in a south to north direction and could extend as far north as 6.8 kilometers (4.2 miles). Sources of sand under consideration are two shoals, Blackfish Bank and an unnamed shoal, located approximately eight (8) and sixteen (16) kilometers (five (5) and ten (10) miles) offshore, respectively (see Figure).

Subsequent beach renourishment cycles would vary throughout the lifecycle of the Proposed Action. Factors dictating the frequency and magnitude of such actions would include storm severity and frequency as well as availability of funding. Given the dynamic nature of the ocean environment and that exact locations and magnitude of renourishment cycles may fluctuate, additional NEPA documentation for renourishment actions may be prepared in the future as appropriate. For the purpose of this EIS, the renourishment cycle is anticipated to be 764,554 cubic meters (one (1) MCY) every five years.

Alternatives to be considered in this EIS will include, but not necessarily be limited to construction of hard structures only, beach fill only, and various combinations of hard structures and beach fill. The effects of dredging fill material from feasible offshore shoals will also be considered.

NASA anticipates that the areas of potential environmental impact from each alternative of most interest to the public would be: The physical effects on both the seafloor and nearby landmasses, the effects on plants, animals, and their habitat (including threatened and endangered species), the effects on commercial and recreational fisheries, the effects on cultural and historic resources, and the effects on water quality.

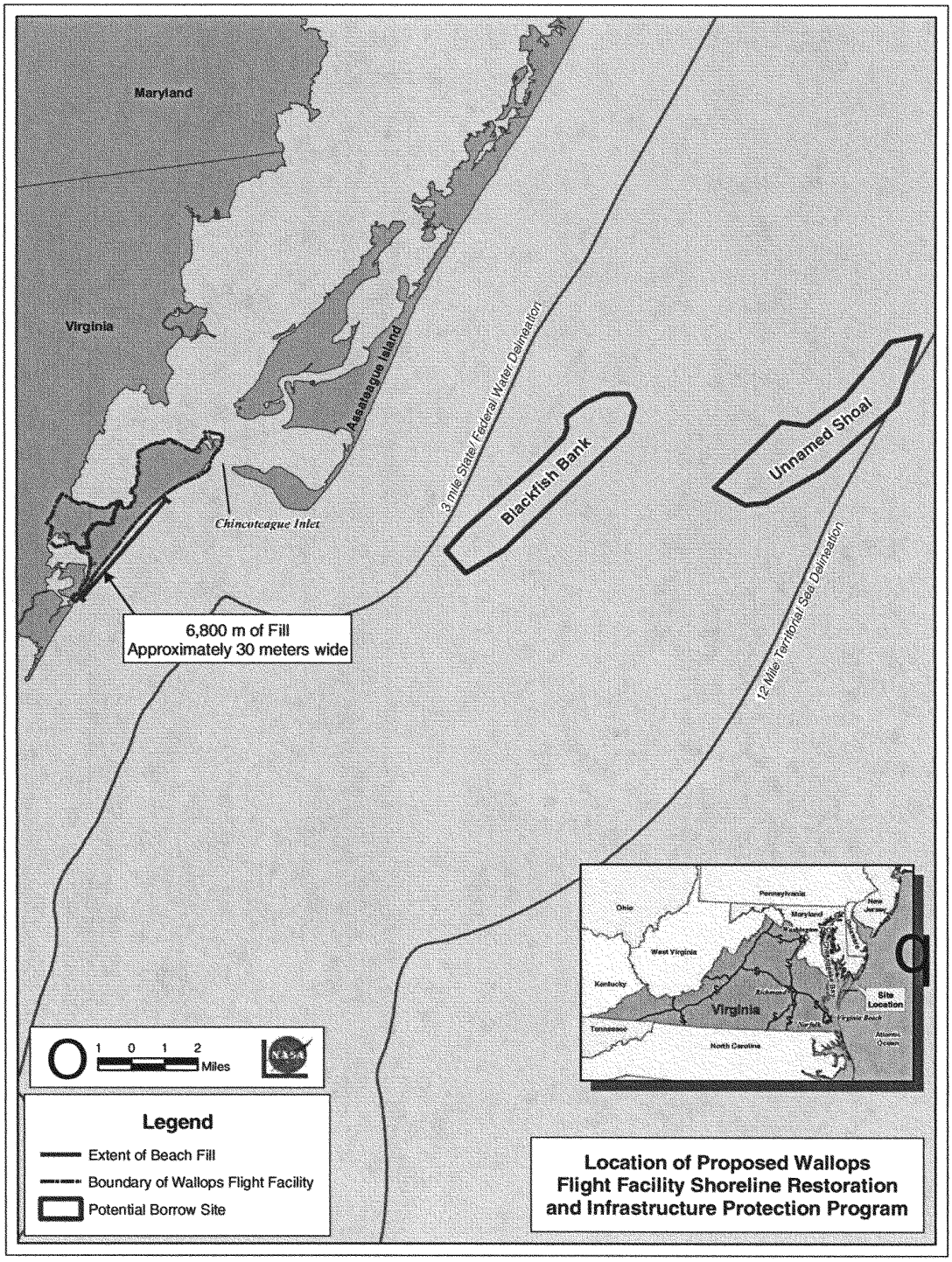
NASA plans to hold a public meeting to provide information on the WFF SRIPP EIS and to solicit public comments. The public meeting is scheduled as follows:

—Tuesday, April 21, 2009, at the WFF Visitor Information Center, Route 175, Wallops Island, Virginia, 6 p.m.–9 p.m.

Written public input on alternatives and environmental issues and concerns associated with the WFF SRIPP that should be addressed in the EIS are hereby requested.

Olga M. Dominguez,

Assistant Administrator for Infrastructure.



[FR Doc. E9–6317 Filed 3–23–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (#66).

*Date/Time:*April 2, 2009 8:30 a.m.–6 p.m. April 3, 2009 8:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 1235.

Type of Meeting: OPEN.

Contact Person: Dr. Morris L. Aizenman, Senior Science Associate, Directorate for Mathematical and Physical Sciences, Room 1005, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8807.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and education activities within the Directorate for Mathematical and Physical Sciences.

Agenda: Update on current status of Directorate. Report of Division of Physics Committee of Visitors. Meeting of MPSAC with Divisions within MPS Directorate. Discussion of MPS Future Activities.

Summary Minutes: May be obtained from the contact person listed above.

Dated: March 18, 2009.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. E9–6316 Filed 3–23–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0131]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 26, 2009, through March 11, 2009. The last biweekly notice was published on March 10, 2009 (74 FR 10305).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party

to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The help electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a

balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of Amendment Request: January 21, 2009, as supplemented on January 23, 2009.

Description of Amendment Request: The proposed changes to the Technical Specifications (TSs) adopt NRC-approved TS Task Force (TSTF) traveler TSTF 163, ''Minimum vs. Steady-State Voltage and Frequency,'' TSTF–222, ''Control Rod Scram Time Testing,'' TSTF–230, ''Residual Heat Removal Suppression Pool Cooling Limiting Condition for Operation [LCO],'' and TSTF–306, ''LCO Action Note to Allow Unisolation of Penetration Flow Path(s),'' and make two minor administrative corrections.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for TSTF–230, which is presented below:

1. Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The proposed change relaxes the Required Actions of LCO [limiting condition for operation] 3.6.2.3 by allowing 8 hours to restore one RHR [residual heat removal] suppression pool cooling subsystem to OPERABLE status when both subsystems have been determined to be inoperable. Required Actions and their associated Completion Times are not initiating conditions for any accident previously evaluated. The proposed 8 hour Completion Time provides some time to restore required subsystem(s) to OPERABLE status, yet is short enough that operating an additional 8 hours is not a significant risk. The Required Actions in the proposed change have been developed to provide assurance that appropriate remedial actions are taken in response to the degraded condition, considering the operability status of the RHR Suppression Pool Cooling System and the capability of minimizing the risk associated with continued operation. As a result, neither the probability nor the consequences of any accident previously evaluated are significantly increased. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the Proposed Change Create the Possibility of a New or Different Kind of Accident from Any Accident Previously Evaluated?

Response: No.

The proposed change does not involve a physical modification or alteration of plant equipment (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The Required Actions and associated Completion Times in the proposed change have been evaluated to ensure that no new accident initiators are introduced. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Response: No.

The relaxed Required Actions do not involve a significant reduction in a margin of safety. The proposed change has been evaluated to minimize the risk of continued operation with both RHR suppression pool cooling subsystems inoperable. The operability status of the RHR Suppression Pool Cooling System, a reasonable time for repair or replacement of required features, and the low probability of a design basis accident occurring during the repair period have been considered in the evaluation. Therefore, this change does not involve a significant reduction in a margin of safety.

The licensee has also provided its analysis of the issue of no significant hazards consideration for TSTFs-163, 222, and 306, and the proposed two minor administrative corrections, which is presented below:

1. Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The minor administrative changes which, (1) corrects Action Statement 3.7.2.F, and (2) changes a reference number from ''ANSI N510–1989'' to ''ASME N510–1989,'' has no impact on any structure, system, component, program, or analysis.

The adoption of TSTF–163 does not change the manner in which the EDGs [emergency diesel generators] are operated and, when implemented, will continue to ensure the EDGs perform their function when called upon. The proposed revision to the TS SRs [surveillance requirements] will continue to ensure that minimum frequency and voltage are attained within the required time. The SRs will continue to ensure that proper steady state voltage and frequency are attained consistent with proper EDG governor and voltage regulator performance. Therefore, the probability or consequences of previously evaluated accidents are not significantly increased.

The proposed change to adopt TSTF–222 is an administrative clarification of existing Technical Specification requirements regarding scram time testing requirements for control rods. It consists of administrative changes that involve wording changes that clarify requirements without changing the original intent. As such, these types of changes do not affect initiators of analyzed events and do not affect the mitigation of any accidents or transients.

The proposed change to adopt TSTF–306 allows primary containment and drywell isolation valves to be unisolated under administrative controls when the associated isolation instrumentation is not operable. The isolation function is an accident mitigating function and is not an initiator of an accident previously evaluated. Administrative controls are required to be in effect when the valves are unisolated so that the penetration can be rapidly isolated when the need is indicated. Therefore, the probability or consequences of previously evaluated accidents are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the Proposed Change Create the Possibility of a New or Different Kind of Accident from Any Accident Previously Evaluated?

Response: No.

The minor administrative changes which, (1) corrects Action Statement 3.7.2.F, and (2) changes a reference number from ''ANSI N510–1989'' to ''ASME N510–1989,'' has no impact on any structure, system, component, program, or analysis.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed), do not change the design function of any equipment, and do not change the methods of normal plant operation. Accordingly, the

proposed changes do not create any new credible failure mechanisms, malfunctions, or accident initiators not previously considered in the RBS [River Bend Station] design and licensing basis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Response: No.

The minor administrative changes which, (1) corrects Action Statement 3.7.2.F, and (2) changes a reference number from ''ANSI N510–1989'' to ''ASME N510–1989,'' has no impact on any structure, system, component, program, or analysis.

Adoption of TSTF–163 does not impact EDG performance, including the capability for each EDG to attain and maintain required voltage and frequency for accepting and supporting plant safety loads within the required time, as assumed in the plant safety analysis. The proposed change does not involve a significant reduction in a margin of safety since the operability of the EDGs continues to be determined as required to support the capability of the EDGs to provide emergency power to plant equipment that mitigate the consequences of an accident.

The proposed change associated with TSTF–222 involves an administrative clarification to better delineate the requirements for scram time testing control rods following refueling outages and for control rods requiring testing due to work activities. As such, the proposed change does not involve a significant reduction in the margin of safety.

The change to allow containment and drywell isolation valves to be unisolated under administrative control (TSTF–306) does not reduce any margins to safety because the proposed allowance for the supporting isolation instrumentation is no less restrictive than the allowance for the equipment it supports. When the valves are unisolated, the design basis function of containment isolation is maintained by administrative controls. The proposed changes have no affect on any safety analysis assumptions or methods of performing safety analyses. The changes do not adversely affect system operability or design requirements and the equipment continues to be tested in a manner and at a frequency necessary to provide confidence that the equipment can perform its intended safety functions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Nuclear Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of Amendment Request: February 12, 2009.

Description of Amendment Request: The proposed amendment would delete those portions of Technical Specifications (TS) superseded by Title 10 of the Code of Federal Regulations (10 CFR), Part 26, Subpart I. This change is consistent with Nuclear Regulatory Commission approved Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler TSTF–511, ''Revision 0, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26.''

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Removal of the Technical Specification requirements will be performed concurrently with the implementation of the 10 CFR Part 26, Subpart I, requirements. The proposed change does not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. Worker fatigue is not an initiator of any accident previously evaluated. Worker fatigue is not an assumption in the consequence mitigation of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Working hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not unnecessarily restrict working hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or effect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed change does not involve any physical changes to plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. Removal of plant-specific Technical Specification administrative requirements will not reduce a margin of safety because the requirements in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Branch Chief: Thomas H. Boyce.

FPL Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of Amendment Request: January 30, 2009.

Description of Amendment Request: The proposed amendment would delete the Duane Arnold Energy Center (DAEC)

Technical Specification (TS) Section 5.2.2.e regarding work hour controls.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Removal of the Technical Specification requirements will be performed concurrently with the implementation of the 10 CFR Part 26, Subpart I, requirements. The proposed change does not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. Worker fatigue is not an initiator of any accident previously evaluated. Worker fatigue is not an assumption in the consequence mitigation of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Working hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not unnecessarily restrict working hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or [a]ffect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed change does not involve any physical changes to the plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Removal of plant-specific Technical Specification administrative requirements will not reduce a margin of safety because the requirements in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. R. E. Helfrich, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Lois M. James.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of Amendment Request: February 24, 2009.

Description of Amendment Request: The proposed amendment would revise the Diablo Canyon Power Plant (DCPP), Units 1 and 2 Technical Specification (TS) 3.3.1, ''Reactor Trip System (RTS) Instrumentation.'' The amendment will delete the requirement for the power range neutron flux rate-high negative rate trip function as specified in TS Table 3.3.1–1, ''Reactor Trip System Instrumentation,'' as Function 3.b, ''Power Range Neutron Flux Rate-High Negative Rate.''

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The removal of the power range neutron flux rate-high negative rate trip function from the DCPP TS does not increase the probability or consequences of accidents resulting from dropped RCCA [rod cluster control assembly] events previously analyzed. The safety functions of other safety-related systems and components, which are related to mitigation of these events, have not been altered. All other reactor trip system protection functions are not impacted by the deletion of the trip function. The dropped RCCA accident analysis does not rely on the negative flux rate trip to safely shut down the plant. The safety analysis of the plant is unaffected by the proposed change. Since the safety analysis is unaffected, the calculated radiological releases associated with the analysis are not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the Proposed Change Create the Possibility of a New or Different Accident from Any Accident Previously Evaluated?

Response: No.

The proposed change does not adversely alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related systems or components. NRC-approved Westinghouse Topical Report WCAP–11394–P–A, ''Methodology for the Analysis of the Dropped Rod Event,'' dated January 1990, has demonstrated that the negative flux rate trip function can be deleted.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Response: No.

The margin of safety associated with the acceptance criteria of any accident is unchanged. It has been demonstrated that the negative flux rate trip function can be deleted by the NRC-approved methodology described in WCAP–11394–P–A. DCPP cycle-specific analyses have confirmed that for dropped RCCA events, limits on DNB [departure from nucleate boiling] are not exceeded by deleting the negative flux rate trip. The proposed change will have no effect on the availability, operability, or performance of safety-related systems and components.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for Licensee: Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Branch Chief: Michael T. Markley.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of Amendment Request: February 17, 2009.

Description of Amendment Request: The licensee proposes to amend the operating license for Virgil C. Summer Nuclear Station, by revising the technical specifications (TS) and incorporating an alternative source term (AST) methodology into the facility's licensing basis. The proposed license amendment involves a full implementation of an AST methodology by revising the current accident source term and replacing it with an AST, as prescribed in 10 CFR 50.67.

AST analyses were performed using the guidance provided by Regulatory Guide (RG) 1.183, ''Alternative Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' dated July 2000, and Standard Review Plan (SRP) Section 15.0.1, ''Radiological Consequences Analyses Using Alternative Source Terms.'' TS changes are also proposed to implement Technical Specifications Task Force Traveler 51, Revision 2, which permits removal of the TS requirements for engineered safety features to be operable after sufficient radioactive decay has occurred to ensure off-site doses remain below the SRP limits. Other TS revisions reflect the update of the accident source term and associated design basis accidents utilizing the guidance provided in RG 1.183 and the associated control room and offsite dose requirements of 10 CFR 50.67. The AST analyses are based on new control room habitability atmospheric dispersion coefficients based on site specific meteorological data in accordance with RG 1.194.

Basis for Proposed No Significant Hazards Consideration Determination: As required by10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1.0 Does the Proposed Change Involve a Significant Increase in the Probability of Occurrence or Consequences of an Accident Previously Evaluated?

Response: No.

Adoptions of the AST and pursuant TS changes and the changes to the atmospheric dispersion factors have no impact to the initiation of DBAs. Once the occurrence of an accident has been postulated, the new accident source term and atmospheric dispersion factors are an input to analyses that evaluate the radiological consequences. Some of the proposed changes do affect the design or manner in which the facility is operated following an accident; however, the proposed changes do not involve a revision to the design or manner in which the facility is operated that could increase the probability of an accident previously evaluated in Chapter 15 of the FSAR.

Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated.

The structures, systems and components affected by the proposed changes act as mitigators to the consequences of accidents. Based on the AST analyses, the proposed changes do revise certain performance requirements; however, the proposed changes do not involve a revision to the parameters or conditions that could contribute to the initiation of an accident previously discussed in Chapter 15 of the FSAR.

Plant-specific radiological analyses have been performed using the AST methodology and new atmospheric dispersion factors. Based on the results of these analyses, it has been demonstrated that the CRHE dose consequences of the limiting events considered in the analyses meet the regulatory guidance provided for use with the AST, and the offsite doses are within acceptable limits. This guidance is presented in 10 CFR 50.67, RG 1.183, and Standard Review Plan Section (SRP) 15.0.1.

Therefore, the proposed amendment does not result in a significant increase in the consequences of any previously evaluated accident.

2.0 Does the Proposed Change Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

Response: No.

Implementation of AST and the associated proposed TS changes and new atmospheric dispersion factors do not alter or involve any design basis accident initiators. With the exception of the fuel handling accident, these changes do not affect the design function or mode of operations of structures, systems and components in the facility prior to a postulated accident. Since structures, systems and components are operated essentially no differently after the AST implementation, no new failure modes are created by this proposed change. The alternative source term change itself does not have the capability to initiate accidents.

For the fuel handling accident, the Improved Standard Technical Specifications Change Traveler (TSTF–51, Revision 2) permits removal of the Technical Specification requirements for ESF features to be operable after sufficient radioactive decay has occurred to ensure off-site doses remain below the SRP limits. As noted in this submittal no credit is taken for the accident mitigation of the ESF features associated with the fuel handling accidents to meet these limits. Since these are not associated with accident initiators the proposed license amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3.0 Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

Response: No.

The results of the AST analyses are subject to the acceptance criteria in 10 CFR 50.67. The analyzed events have been carefully selected, and the analyses supporting these changes have been performed using approved methodologies to ensure that analyzed events are bounding and safety margin has not been reduced. The dose consequences of these limiting events are within the acceptance criteria presented in 10 CFR 50.67, RG 1.183, and SRP 15.0.1. Thus, by meeting the applicable regulatory limits for AST, there is no significant reduction in a margin of safety.

New Control Room atmospheric dispersion factors ($_{X}$/Qs) based on site specific meteorological data, calculated in accordance with the guidance of RG 1.194, utilizes more recent data and improved calculational methodologies.

For the fuel handling accident, the Improved Standard Technical Specifications Change Traveler (TSTF–51, Revision 2) permits removal of the Technical Specification requirements for ESF features to be operable after sufficient radioactive decay has occurred to ensure off-site doses remain below the SRP limits. Following sufficient decay, the primary success paths for mitigating the fuel handling accident no longer includes the functioning of the active containment or fuel handling building systems. With the proposed changes, the OPERABILITY requirements of the Technical Specifications will reflect that water level (23′) and decay time (72 hours after shutdown) are the primary success path for mitigating a fuel handling accident.

Therefore, because the proposed changes continue to result in dose consequences within the applicable regulatory limits, the changes are considered to not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Melanie C. Wong.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of Amendment Request: March 2, 2009.

Description of Amendment Request: The proposed amendment would delete those portions of technical

specifications (TS) superseded by Title 10 of the Code of Federal Regulations (10 CFR) Part 26, Subpart I. This change is consistent with the Nuclear Regulatory Commission (NRC)-approved Revision 0 to Technical Specification Task Force (TSTF) Traveler, TSTF–511, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26.'' The availability of this TS improvement was announced in the **Federal Register** on December 30, 2008, (73 FR 79923) as part of the consolidated line item improvement process.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Removal of the Technical Specification requirements will be performed concurrently with the implementation of the 10 CFR Part 26, Subpart I, requirements. The proposed change does not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. Worker fatigue is not an initiator of any accident previously evaluated. Worker fatigue is not an assumption in the consequence mitigation of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Working hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not unnecessarily restrict working hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change removes Technical Specification restrictions on working hours for personnel who perform safety related functions. The Technical Specification restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed change does not involve any physical changes to the plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition.

Removal of plant-specific Technical Specification administrative requirements will not reduce a margin of safety because the requirements in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Branch Chief: Melanie C. Wong.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of Amendment Request: February 6, 2009.

Description of Amendment Request: The proposed amendments would delete applicable portions of the technical specifications (TSs) superseded by Part 26, Subpart I of Title 10 of the Code of Federal Regulations (10 CFR). This change is consistent with Nuclear Regulatory Commission (NRC)-approved Revision 0 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler, TSTF–511, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26.'' The availability of this TS improvement was announced in the **Federal Register** on December 30, 2008 (73 FR 79923) as part of the consolidated line item improvement process. The licensee affirmed the applicability of the model no significant hazards consideration determination in its application.

Basis for Proposed No Significant Hazards Consideration Determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration adopted by the licensee is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Removal of the TS requirements will be performed concurrently with the implementation of the 10 CFR Part 26, Subpart I, requirements. The proposed change does not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. Worker fatigue is not an initiator of any accident previously evaluated. Worker fatigue is not an assumption in the consequence mitigation of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. Working hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not unnecessarily restrict working hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not create the possibility of a new or different

kind of accident from any previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR Part 26. The proposed change does not involve any physical changes to plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Removal of plant-specific TS administrative requirements will not reduce a margin of safety because the requirements in 10 CFR Part 26 are adequate to ensure that worker fatigue is managed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's incorporation of the above analysis by reference and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Melanie C. Wong.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of Application for Amendments: August 27, 2008, as supplemented by letters dated December 11, 2008, and March 2, 2009.

Brief Description of Amendments: The amendments revise Technical Specification 3.5.5, ''Trisodium Phosphate (TSP),'' by changing the containment buffering agent from trisodium phosphate to sodium tetraborate. The change will minimize the potential for sump screen blockage under loss-of-coolant accident conditions due to potential chemical interactions between trisodium phosphate and insulation materials inside containment.

Date of Issuance: March 4, 2009.

Effective Date: As of the date of issuance. Implementation at Unit No. 1 shall be no later than startup from the spring 2010 refueling outage whereas implementation at Unit No. 2 shall be prior to entry into Mode 4 following the spring 2009 refueling outage.

Amendment Nos.: 290 and 266.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the License and Technical Specifications.

Date of Initial Notice in ***Federal Register****:* October 21, 2008 (73 FR 62562). The supplemental letters dated December 11, 2008, and March 2, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated March 4, 2009.

No Significant Hazards Consideration Comments Received: No.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of Application for Amendments: December 11, 2007, as supplemented December 18, 2008.

Brief Description of Amendments: The amendments revised the Technical Specifications sections to allow the bypass test times and Completion Times (CTs) for Limiting Condition for Operation (LCOs) 3.3.1, ''Reactor Trip System (RTS) Instrumentation'' and 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation.''

By letter dated December 30, 2008 (Agencywide Documents Access and Management System Accession No. ML083520046), the Nuclear Regulatory Commission issued Amendment No. 248 and Amendment No. 228 for McGuire Units 1 and 2, respectively, for all the proposed changes approved by the NRC in TSTFs 411 and 418. The December 30, 2008 amendment stated that the following changes would be evaluated in a future amendment:

LCO 3.3.1, ''RTS Instrumentation,'' Condition N, One Reactor Coolant Flow—Low (Single Loop) channel inoperable, LCO 3.3.2, ''ESFAS Instrumentation,'' Condition D, Auxiliary Feedwater Start with Station Blackout.''

This amendment approves the above changes.

Date of Issuance: March 9, 2009.

Effective Date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 250 and 230.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the

licenses and the technical specifications.

Date of Initial Notice in ***Federal Register****:* March 25, 2008 (73 FR 15783). The supplement dated December 18, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 2009.

No Significant Hazards Consideration Comments Received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of Application for Amendment: September 4, 2008, as supplemented by letter dated January 28, 2009.

Brief Description of Amendment: The amendment revised the Technical Specification (TS) Section 5.1, ''Site,'' to remove the restriction on the sale and lease of site property and replace the restriction with a requirement to retain complete authority to determine and maintain sufficient control of all activities, including the authority to exclude or remove personnel and property, within the minimum exclusion area.

Date of Issuance: February 26, 2009.

Effective Date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 235.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of Initial Notice in ***Federal Register****:* November 4, 2008 (73 FR 65692). The supplemental letter dated January 28, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 26, 2009.

No Significant Hazards Consideration Comments Received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of Application for Amendment: July 21, 2008, as supplemented by letter dated December 11, 2008.

Brief Description of Amendment: The amendment relocated Technical Specification (TS) 3.7.8, ''Shock Suppressors (Snubbers),'' to the Technical Requirements Manual. In addition, the amendment revised TS requirements for inoperable snubbers by adding Limiting Condition for Operation (LCO) 3.0.8 on the inoperability of snubbers. The amendment also makes conforming changes to TS LCO 3.0.1. This amendment is consistent with U.S. Nuclear Regulatory Commission-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification change TSTF–372, Revision 4, ''Addition of LCO 3.0.8, Inoperability of Snubbers.''

Date of Issuance: March 6, 2009.

Effective Date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 283.

Renewed Facility Operating License No. NPF–6: Amendment revised the Technical Specifications/license.

Date of Initial Notice in ***Federal Register****:* November 4, 2008 (73 FR 65693). The supplemental letter dated December 11, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 2009.

No Significant Hazards Consideration Comments Received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of Application for Amendment: September 11, 2008.

Brief Description of Amendment: The amendment revised several surveillance requirements (SRs) and added SR 3.8.1.21 in Technical Specification (TS) 3.8.1, ''AC [alternating current] Sources—Operating,'' and TS 3.8.2, ''AC Sources—Shutdown.'' The changes allow the slow-start testing sequence of the diesel generators in order to reduce the stress and wear on the equipment.

Date of Issuance: March 4, 2009.

Effective Date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment No.: 182.

Facility Operating License No. NPF–29: The amendment revises the Facility Operating License and Technical Specifications.

Date of Initial Notice in ***Federal Register****:* October 7, 2008 (73 FR 58673).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 2009.

No Significant Hazards Consideration Comments Received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of Application for Amendments: May 2, 2008, as supplemented by letter dated July 23, 2008.

Brief Description of Amendments: The amendments modify technical specification (TS) 3.8.3, ''Diesel Fuel Oil and Starting Air,'' to replace the numerical volume requirements for stored diesel fuel oil inventory with requirements that state that volumes equivalent to 7 days and 6 days of fuel oil are available, and to move the diesel fuel oil numerical volumes equivalent to 7 day and 6 day supplies to the TS Bases.

Date of Issuance: March 9, 2009.

Effective Date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 191 and 178.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications and License.

Date of Initial Notice in ***Federal Register****:* August 12, 2008 (73 FR 46930). The July 23, 2008 supplement, contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 2009.

No Significant Hazards Consideration Comments Received: No.

PPL Susquehanna, LLC, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of Application for Amendment: October 30, 2008, as supplemented by letters dated November 12, 2008 and January 23, 2009.

Brief Description of Amendment: This amendment request would revise PPL Susquehanna, LLC, Unit 2 Technical Specifications Section 2.1.1.2, Minimum Critical Power Ratio Safety Limits for two-loop and single-loop operation and adds an associated License Condition in the Facility Operating License.

Date of Issuance: February 26, 2009.

Effective Date: February 26, 2009.

Amendment No.: 230.

Facility Operating License No. NPF–22: This amendment revised the License and Technical Specifications.

Date of Initial Notice in ***Federal Register****:* January 23, 2009 (74 FR 4254). The supplements dated November 21, 2008, and January 23, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on January 23, 2009 (74 FR 4254).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2009.

No Significant Hazards Consideration Comments Received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of Application for Amendment: April 25, 2008, as supplemented by letter dated January 7, 2009.

Brief Description of Amendment: The amendment revises the Technical Specifications (TSs) to remove the restriction on operation of the hydrogen water chemistry system at low power levels.

Date of Issuance: March 4, 2009.

Effective Date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 176.

Facility Operating License No. NPF–57: The amendment revised the TSs and the License.

Date of Initial Notice in ***Federal Register****:* July 29, 2008 (73 FR 43957). The letter dated January 7, 2009, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 2009.

No Significant Hazards Consideration Comments Received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of Application for Amendment: September 18, 2008, as supplemented February 11, 2009.

Brief Description of Amendment: The amendment revised requirements for the auxiliary feedwater system auto-start function associated with the trip of main feedwater pumps.

Date of Issuance: March 4, 2009.

Effective Date: As of the date of issuance and shall be implemented within 270 days of issuance.

Amendment No.: 75.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of Initial Notice in ***Federal Register****:* November 4, 2008 (73 FR 65698). The supplement dated February 11, 2009, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 4, 2009.

No Significant Hazards Consideration Comments Received: No.

Dated at Rockville, Maryland, this 13th day of March 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–6112 Filed 3–23–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; NRC–2008–0618]

FPL Energy Duane Arnold, LLC; Duane Arnold Energy Center; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

FPL Energy Duane Arnold, LLC has submitted an application for renewal of Facility Operating License No. DPR–49 for an additional 20 years of operation at Duane Arnold Energy Center (DAEC). DAEC is located near Cedar Rapids, IA. The operating license for DAEC expires on February 21, 2014. The application for renewal, dated September 30, 2008, was submitted pursuant to Title 10 of the Code of Federal Regulations (10 CFR) Part 54. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on November 17, 2008 (73 FR 67895). A notice of acceptance for docketing of the application for renewal of the facility operating license was also published in the **Federal Register** on February 17, 2009 (74 FR 7489). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) related to the license renewal application and to provide the public with an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, FPL Energy Duane Arnold, LLC submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is publicly available at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, or from the NRC's Agencywide Documents Access and Management System (ADAMS). The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The Accession Number for the ER is ML082980483. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr.resource@nrc.gov*. The ER may also be viewed on the Internet at: *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/duane-arnold-energy-center.html.* In addition, the ER is available for public inspection near DAEC at the following public library: Hiawatha Public Library, 150 West Willman Street, Hiawatha, Iowa.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants'' (NUREG–1437), related to the review of the application for renewal of the DAEC operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with NEPA and the NRC's regulations found in 10 CFR Part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal Government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other ElSs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, FPL Energy Duane Arnold, LLC.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian Tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the DAEC license renewal supplement to the GEIS. The scoping meetings will be held at the Hiawatha City Hall, 101 Emmons St., Hiawatha Iowa 52233. There will be two sessions to accommodate interested parties, which will be held on April 22, 2009. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting the NRC Environmental Project Manager, Mr. Charles H. Eccleston, by telephone at 1–800–368–5642, extension 8537, or by e-mail to the NRC at *charles.eccleston@nrc.gov* no later than April 15, 2009. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Eccleston will need to be contacted no later than April 15, 2009, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the DAEC license renewal review to: Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, Mailstop TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by May 25, 2009. Electronic comments may be sent by e-mail to the NRC at *DuaneArnoldEIS@nrc.gov,* and should be sent no later than May 25, 2009, to be considered in the scoping process. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *carol.gallagher@nrc.gov.* Comments will be available electronically and accessible through ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm.*

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application is included in the **Federal Register** dated February 17, 2009 (74 FR 7489). Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm.* The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Eccleston at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 13th day of March, 2009.

For the Nuclear Regulatory Commission.

David L. Pelton,

Branch Chief, Project Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–6413 Filed 3–23–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0385]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 1.125, Revision 2.

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7495 or e-mail to *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 1.125, ''Physical Models for Design, and Operation of Hydraulic Structures and Systems for Nuclear Power Plants,'' was issued with a temporary identification as Draft Regulatory Guide, DG–1198. This guide describes the detail and documentation of data and studies that an applicant should include in the preliminary and/or final safety analysis report (PSAR/FSAR) to support the use of physical hydraulic model testing for predicting the performance of hydraulic structures and systems for nuclear power plants. Hydraulic structures are defined as anything that can be used to divert, restrict, stop, or otherwise manage the natural flow of water. The regulatory position of this guide is applicable only to physical models used to predict the action or interaction of surface waters with features located outside the containment. The recommendations of this guide do not apply to internal plant systems or structures.

II. Further Information

In July 2008, DG–1198 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on September 5, 2008. The staff's responses to the public comments are located in the NRC's Agencywide Documents Access and Management System (ADAMS), Accession Number ML082810214.

Electronic copies of Regulatory Guide 1.125, Revision 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/.* In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 16th day of March, 2009.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–6408 Filed 3–23–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Weeks of March 23, 30, April 6, 13, 20, 27, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 23, 2009

There are no meetings scheduled for the week of March 23, 2009.

Week of March 30, 2009—Tentative

There are no meetings scheduled for the week of March 30, 2009.

Week of April 6, 2009—Tentative

There are no meetings scheduled for the week of April 6, 2009.

Week of April 13, 2009—Tentative

Wednesday, April 15, 2009

9:30 a.m.

Briefing on NRC Corporate Support (Public Meeting). (*Contact:* Karen Olive, 301–415–2276)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, April 16, 2009

1:30 p.m.

Briefing on Human Capital and EEO (Public Meeting) (*Contact:* Kristin Davis, 301–492–2266)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Friday, April 17, 2009

9:30 a.m.

Briefing on Low Level Radioactive Waste—Part 1 (Public Meeting) (*Contact:* Patricia Swain, 301–415–5405)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Friday, April 17, 2009

1:30 p.m.

Briefing on Low Level Radioactive Waste—Part 2 (Public Meeting) (*Contact:* Patricia Swain, 301–415–5405)

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

Week of April 20, 2009—Tentative

Thursday, April 23, 2009

2:00 p.m.

Briefing on Radioactive Source Security (Public Meeting) (*Contact:* Kim Lukes, 301–415–6701).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 27, 2009—Tentative

There are no meetings scheduled for the week of April 27, 2009.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with

disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, *TDD:* 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

Dated: March 19, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–6549 Filed 3–20–09; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–260; NRC–2009–0135]

Tennessee Valley Authority, Browns Ferry Nuclear Plant, Unit 2; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Tennessee Valley Authority (TVA, the licensee) to withdraw its December 22, 2008, application for proposed amendment to Facility Operating License No. DPR–52 for the Browns Ferry Nuclear Plant Unit 2, located in Limestone County, Alabama.

The proposed amendment would, on a one-time basis, extend several Technical Specification surveillance frequencies approximately 45 days.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 27, 2009 (74 FR 4775). However, by letter dated March 6, 2009, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 22, 2008, and the licensee's letter dated March 6, 2009, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of March 2009.

For the Nuclear Regulatory Commission.

Eva A. Brown,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulations.

[FR Doc. E9–6401 Filed 3–23–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2008–0036]

Delay in Modification of Action Taken in Connection With WTO Dispute Settlement Proceedings on the European Communities' Ban on Imports of U.S. Beef and Beef Products

Correction

In notice document E9–5933 beginning on page 11613 in the issue of Wednesday, March 18, 2009 make the following correction:

On page 11614, in the second column, after the signature block, Annex I and Annex II are reprinted in full to read as set forth below:

Annex I

A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after March 23, 2009, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is modified by deleting the following HTS subheadings: 9903.02.31, 9903.02.33, 9903.02.35, 9903.02.36, 9903.02.37, 9903.02.38, and 9903.02.47.

B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after March 23, 2009, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is modified by deleting HTS subheading 9903.02.39 and the superior text thereto.

C. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after March 23, 2009, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is modified by deleting HTS subheadings 9903.02.40, 9903.02.41, and 9903.02.42 and the superior text thereto.

D. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after March 23, 2009, the Harmonized Tariff Schedule of the United States (HTS) is modified by adding in numerical sequence the following superior text and subheading to subchapter III of chapter 99 to the HTS. The superior text and subheading are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-General", respectively:

	"Articles the product of Austria or France:	
9903.02.83	Juice of any other single fruit, not elsewhere specified or included, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter (provided for in subheading 2009.80.60)	100%"

Annex II

A. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after April 23, 2009, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) is modified by deleting the following HTS subheadings and the superior text thereto: 9903.02.21, 9903.02.22, 9903.02.23, 9903.02.24, 9903.02.25, 9903.02.26, 9903.02.27, 9903.02.28, 9903.02.29, 9903.02.30, 9903.02.32, 9903.02.34, 9903.02.43, 9903.02.44, 9903.02.45, 9903.02.46, and 9903.02.83.

B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after April 23, 2009, the Harmonized Tariff Schedule of the United States (HTS) is modified by adding in numerical sequence the following superior text and subheadings to subchapter III of chapter 99 to the HTS. The superior text and subheadings are set forth in columnar format, and

material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", and "Rates of Duty 1-General", respectively:

	"Articles the product of Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain or Sweden:	
	Meat of bovine animals, fresh or chilled (provided for in heading 0201):	
9903.02.48	Articles of subheading 0201.10.05, 0201.10.10, 0201.20.02, 0201.20.04, 0201.20.06, 0201.20.10, 0201.20.30, 0201.20.50, 0201.30.02, 0201.30.04, 0201.30.06, 0201.30.10, 0201.30.30 or 0201.30.50	100%
9903.02.49	Articles of subheading 0201.10.50, 0201.20.80 or 0201.30.80	100%
	Meat of bovine animals, frozen (provided for in heading 0202):	
9903.02.50	Articles of subheading 0202.10.05, 0202.10.10, 0202.20.02, 0202.20.04, 0202.20.06, 0202.20.10, 0202.20.30, 0202.20.50, 0202.30.02, 0202.30.04, 0202.30.06, 0202.30.10, 0202.30.30 or 0202.30.50	100%
9903.02.51	Articles of subheading 0202.10.50, 0202.20.80 or 0202.30.80	100%
9903.02.52	Meat of swine, fresh or chilled (provided for in subheading 0203.11, 0203.12 or 0203.19)	100%
9903.02.53	Carcasses and half-carcasses of swine, frozen (provided for in subheading 0203.21)	100%
9903.02.54	Hams, shoulders, and cuts thereof, with bone in, of swine, frozen (provided for in subheading 0203.22)	100%
9903.02.55	Processed meat of swine, frozen, other than carcasses and half-carcasses of swine and other than hams, shoulders, and cuts thereof, with bone in (provided for in subheading 0203.29.20)	100%
9903.02.56	Edible offal of bovine animals, fresh or chilled (provided for in subheading 0206.10)	100%
9903.02.57	Edible offal of bovine animals, frozen (provided for in subheading 0206.21, 0206.22 or 0206.29)	100%
9903.02.58	Meat and edible offal, of the poultry of heading 0105, fresh, chilled or frozen (provided for in heading 0207)	100%
9903.02.59	Hams, shoulders, and cuts thereof, with bone in, of swine, salted, in brine, dried or smoked (provided for in subheading 0210.11)	100%
9903.02.60	Meat of bovine animals, salted, in brine, dried or smoked (provided for in subheading 0210.20)	100%
9903.02.61	Meat of poultry of heading 0105, salted, in brine, dried or smoked (provided for in subheading 0210.99.20)	100%
9903.02.62	Roquefort cheese (provided for in subheading 0406.40.20 and 0406.40.40)	300%

9903.02.63	Foliage, branches and other parts of plants, without flowers or flower buds, and grasses, being goods of a kind suitable for bouquets or for ornamental purposes, fresh, dried or bleached (provided for in subheading 0604.91 or 0604.99.30) . . .	100%
9903.02.64	Truffles, fresh or chilled (provided for in subheading 0709.59.10)	100%
9903.02.65	Rolled or flaked grains of oats (provided for in subheading 1104.12)	100%
9903.02.66	Grains of oats, hulled, pearled, sliced, kibbled or otherwise worked, not elsewhere specified or included (provided for in subheading 1104.22)	100%
9903.02.67	Sausages and similar products of beef, and food preparations based on these products, in airtight containers (provided for in subheading 1601.00.40)	100%
9903.02.68	Other prepared or preserved meat, meat offal or blood, of liver of any animal (provided for in subheading 1602.20)	100%
9903.02.69	Other prepared or preserved meat, meat offal or blood, of poultry of heading 0105 (provided for in subheading 1602.31, 1602.32, 1602.39)	100%
9903.02.70	Other prepared or preserved meat, meat offal or blood, of bovine animals (provided for in subheading 1602.50)	100%
9903.02.71	Chewing gum, whether or not sugar-coated, not containing cocoa (provided for in subheading 1704.10)	100%
9903.02.72	Chocolate and other food preparations containing cocoa, in blocks, slabs or bars, filled, weighing 2 kg or less each (provided for in subheading 1806.31) . . .	100%
9903.02.73	Lingonberry and raspberry jams (provided for in subheading 2007.99.05)	100%
9903.02.74	Pears, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included (provided for in subheading 2008.40)	100%
9903.02.75	Peaches, excluding nectarines, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included (provided for in subheading 2008.70.20)	100%
	Articles the product of Finland, France, Ireland, the Netherlands or Sweden:	
9903.02.76	Meat of swine, frozen, not processed, other than carcasses and half-carcasses of swine and other than hams, shoulders, and cuts thereof, with bone in (provided for in subheading 0203.29.40)	100%
	Articles the product of France:	
9903.02.77	Chestnuts (Castanea spp.), fresh or dried, whether or not shelled or peeled (provided for in subheading 0802.40)	100%
9903.02.78	Wool grease (other than crude wool grease) and fatty substances derived from wool grease (including lanolin) (provided for in subheading 1505.00.90)	100%
	Articles the product of Austria, Cyprus, France or Poland:	
9903.02.79	Grape juice (including grape must), not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter (provided for in subheading 2009.61 or 2009.69)	100%

9903.02.80	Juice of any other single fruit, not elsewhere specified or included, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter (provided for in subheading 2009.80.60)	100%
9903.02.81	Mixtures of juices, other than mixtures of vegetable juices, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter (provided for in subheading 2009.90.40)	100%
	Articles the product of Italy:	
9903.02.82	Mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored (provided for in subheading 2201.10)	100%"

[FR Doc. Z9–5933 Filed 3–23–09; 8:45 am]
BILLING CODE 1505–01–D

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–21 and CP2009–26; Order No. 193]

New Competitive Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract Mail 5 to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due March 25, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 13, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 5 to the Competitive Product List.[1] The Postal Service asserts that Priority Mail Contract 5 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009–21.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–26.

Request. The Request incorporates (1) a redacted version of the Governors' Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the Mail Classification Schedule product list; (4) a statement of supporting justification as required by 39 CFR 3020.32; and (5) certification of compliance with 39 U.S.C. 3633(a).[2] Substantively, the Request seeks to add Priority Mail Contract 5 to the Competitive Product List. *Id.* at 1–2.

In the statement of supporting justification, Mary Prince Anderson, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment D. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related Contract. A redacted version of the specific Priority Mail Contract 5 is included with the Request. The contract is for 1 year and is to be effective 1 day after the Commission provides all necessary regulatory approvals. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *See id.,* Attachment A and Attachment E. It notes that actual performance under this contract could vary from estimates, but concludes that the risks are manageable. Id. at Attachment A.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail Contract 5, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2–3.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–21 and CP2009–26 for consideration of the Request pertaining to the proposed Priority Mail Contract 5 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020 subpart B. Comments are due no later than March 25, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–21 and CP2009–26 for

[1] Request of the United States Postal Service to Add Priority Mail Contract 5 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, March 13, 2009 (Request).

[2] Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Priority Mail Service (Governors' Decision No. 09–4). The Governors' Decision includes an attachment which provides an analysis of the proposed Priority Mail Contract 5. Attachment B is the redacted version of the contract. Attachment C shows the requested changes to the Mail Classification Schedule product list. Attachment D provides a statement of supporting justification for this Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).

consideration of the matter raised in each docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than March 25, 2009.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E9–6419 Filed 3–23–09; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 23c–1; SEC File No. 270–253; OMB Control No. 3235–0260.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 23c–1 (17 CFR 270.23c–1) under the Investment Company Act of 1940 (15 U.S.C. 80a), among other things, permits a closed-end fund to repurchase its securities for cash if in addition to the other requirements set forth in the rule: (i) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the asset coverage per unit of the security to be purchased is disclosed to the seller or his agent; and (iii) if the security is a stock, the fund has, within the preceding six months, informed stockholders of its intention to purchase stock. Commission staff estimates that approximately 36 closed-end funds rely on Rule 23c–1 annually to undertake 324 repurchases of their securities. Commission staff estimates that, on average, a fund spends 2.5 hours to comply with the paperwork requirements listed above each time it undertakes a security repurchase under the rule. Commission staff thus estimates the total annual burden of the rule's paperwork requirements is 810 hours.

In addition, the fund must file with the Commission a copy of any written solicitation to purchase securities given by or on behalf of the fund to 10 or more persons. The copy must be filed as an exhibit to Form N–CSR (17 CFR 249.331 and 274.128). The burden associated with filing Form N–CSR is addressed in the submission related to that form.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: March 18, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6406 Filed 3–23–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28650; 812–13538]

ING Investments, LLC, et al.; Notice of Application

March 17, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: ING Investments, LLC (''IIL''), Directed Services, LLC (''DSL''), ING Investment Management Co. (''IIM''), ING Funds Distributor, LLC (''IFD'') and ING Investors Trust, ING Partners, Inc., ING Mutual Funds, ING Series Funds, Inc., and ING Strategic Allocation Portfolios, Inc. (collectively, the ''Trusts'').

Filing Dates: The application was filed on June 4, 2008, and amended on March 13, 2009.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 13, 2009 and should be accompanied by proof of service on applicants, 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 Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Huey P. Falgout, Jr., ING Investments, LLC, 7337 E. Doubletree Ranch Road, Scottsdale, AZ 85258.

FOR FURTHER INFORMATION CONTACT: Lewis Reich, Senior Counsel, at (202) 551–6919, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations

1. ING Investors Trust is organized as a Massachusetts business trust. ING Mutual Funds is organized as a Delaware statutory trust. Each of the other Trusts is organized as a Maryland corporation. Each Trust is registered

under the Act as an open-end management investment company. Each of IIL, DSL and IIM and is registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and currently serves as an investment adviser or sub-adviser to existing series of the Trust. IFD, a Delaware corporation, is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (''Exchange Act''). IFD currently serves as the distributor of the existing series of the Trust. The Trusts and each existing or future registered open-end management investment company or series thereof that is in the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts and that is advised by IIL, DSL or IIM or any entity controlling, controlled by or under common control with IIL, DSL or IIM (the ''Advisers''), together with series of the Trusts are referred to as the ''Funds.'' Applicants request the exemption to the extent necessary to permit any Fund that may invest in other funds in reliance on Section 12(d)(1)(G) of the Act, and which is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act, to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1]

2. Consistent with its fiduciary obligations under the Act, each Fund's board of trustees or directors will review the advisory fees charged by the Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds to invest in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6391 Filed 3–23–09; 8:45 am]

BILLING CODE 8010–01–P

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59589; File No. SR–BX–2009–016]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the $1 Strike Price Program on the Boston Options Exchange Facility

March 17, 2009.

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 March 16, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter IV, Section 6 (Series of Options Contracts Open for Trading) of the Rules of the Boston Options Exchange Group, LLC (''BOX'') to expand the $1 Strike Price Program. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to expand the $1 Strike Price Program (the ''Program'').[3] The $1 Strike Price Program currently allows BOX to select a total of 10 individual stocks on which option series may be listed at $1 strike price intervals. In order to be eligible for selection into the Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the Program, BOX may list strike prices at $1 intervals from $3 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. BOX may also list $1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules. BOX may not list long-term option series (''LEAPS'') at $1 strike price intervals for any class selected for the Program. BOX also is restricted from listing any series that would result in strike prices being $0.50 apart.

The Exchange now proposes to expand the Program to allow BOX to select a total of 55 individual stocks on which option series may be listed at $1 strike price intervals, and to expand slightly the price range on which BOX may list $1 strikes, *i.e.*, from $1 to $50. The existing restrictions on listing $1 strikes would continue, i.e., no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day, and BOX is restricted from listing any series that would result in strike prices being $0.50 apart.

As stated in the filings establishing BOX's Program and in subsequent extensions and expansions of the Program, BOX believes that $1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. Indeed, Participants representing customers have repeatedly requested that BOX seek to expand the Program in terms of the number of classes on which option series may be listed at $1 strike price intervals. The Exchange notes that current market conditions, in which the number of securities trading below $50 has increased dramatically, further warrant the expansion of the Program.

The Exchange is also proposing to set forth a delisting policy. Specifically, BOX would, on a monthly basis, review series that were originally listed under the $1 Strike Price Program with strike prices that are more than $5 from the current values of the options classes in the Program. BOX would delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, BOX could grant Participant requests to add strikes and/or maintain strikes in certain options classes in series eligible for delisting.

Further, in connection with the proposed delisting policy, if BOX identifies series for delisting, BOX shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed options classes. The Exchange expects that the proposed delisting policy will be adopted by other options exchanges that amend their rules to employ a similar expansion of the Program.

With regard to the impact on system capacity, BOX has analyzed its capacity and the Exchange represents that BOX and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

The Exchange believes that the $1 Strike Price Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, the Exchange requests an expansion of the current Program.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[4] in general, and Section 6(b)(5) of the Act,[5] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that expanding the current $1 Strike Price Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities.

[3] The $1 Strike Price Program was established as a pilot in February 2004. *See* Securities Exchange Act Release Nos. 49292 (February 20, 2004), 69 FR 8993 (February 26, 2004) (SR–BSE–2004–01) (establishing the Pilot Program). The pilot was subsequently extended through June 5, 2008. *See* Securities Exchange Act Release Nos. 49806 (June 4, 2004), 69 FR 32640 (June 10, 2004) (SR–BSE–2004–22); 51778 (June 2, 2005), 70 FR 33562 (June 8, 2005) (SR–BSE–2005–18); 53855 (May 24, 2006), 71 FR 30973 (May 31, 2006) (SR–BSE–2006–19); and 55684 (April 30, 2007), 72 FR 26188 (May 8, 2007) (SR–BSE–2007–17). The pilot was subsequently expanded and made permanent in 2008. *See* Securities Exchange Act Release No. 57302 (February 11, 2008), 73 FR 8913 (February 15, 2008) (SR–BSE–2008–08).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to implement its proposed expansion of the Program contemporaneously with other exchanges,[8] and respond to increased customer demand for $1 strikes without delay.[9] Therefore, the Commission designates the proposal operative upon filing. The Commission expects that the Exchange will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

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.

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 No. SR–BX–2009–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–016. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit onlyinformation that you wish to make available publicly. All submissions should refer to File No. SR–BX–2009–016 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6329 Filed 3–23–09; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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. BX has met this requirement.

[8] *See* Securities Exchange Act Release No. 59587 (March 17, 2009) (SR–ISE–2009–04, SR–CBOE–2009–001, SR–NYSEArca–2009–10, and SR–NYSEALTR–2009–11) (Order Granting Accelerated Approval of Proposed Rule Changes, as Amended, to Expand the $1 Strike Program).

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59588; File No. SR–NASDAQ–2009–025]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by The NASDAQ Stock Market LLC Related To the $1 Strike Price Program

March 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on March 17, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes for NOM to modify Chapter IV, Section 6 (Securities Traded on NOM) of its options rules to expand the Exchange's $1 Strike Price Program (the ''Program'').[3]

The text of the proposed rule change is available from Nasdaq's website at *http://nasdaq.cchwallstreet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The $1 Strike Price Program was initially approved as a pilot on March 12, 2008. *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080).The program was subsequently expanded and made permanent. *See* Securities Exchange Act Release No. 58093 (July 3, 2008), 73 FR 39756 (July 10, 2008) (SR–NASDAQ–2008–057).

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

The purpose of this proposed rule change is to modify Chapter IV, Section 6 of NOM options rules to expand the Program to allow the Exchange to select 55 individual stocks on which options may be listed at $1 strike price intervals and to expand the price range on which the Exchange may list such options.

Currently, the Program allows Nasdaq to select a total of 10 individual stocks on which option series may be listed at $1 strike price intervals. In order to be eligible for selection into the Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the Program, the Exchange may list strike prices at $1 intervals from $3 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list $1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules. The Exchange may not list long-term option series at $1 strike price intervals for any class selected for the Program. The Exchange also is restricted from listing any series that would result in strike prices being $0.50 apart.

The Exchange now proposes to expand the Program to allow Nasdaq to select a total of 55 individual stocks on which option series may be listed at $1 strike price intervals, and to expand slightly the price range on which the Exchange may list $1 strikes, *i.e.*, from $1 to $50. The existing restrictions on listing $1 strikes would continue, *i.e.*, no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day, and Nasdaq is restricted from listing any series that would result in strike prices being $0.50 apart.

As stated in the Commission orders that initially approved the $1 strike price program and in subsequent extensions and expansions of the program,[4] the Exchange believes that $1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. Indeed, member firms representing customers have repeatedly requested that Nasdaq seek to expand the Program in terms of the number of classes on which option series may be listed at $1 strike price intervals. The Exchange notes that current market conditions, in which the number of securities trading below $50 has increased dramatically, further warrant the expansion of the Program.

The Exchange is also proposing to set forth a delisting policy. Specifically, the Exchange would, on a monthly basis, review series that were originally listed under the Program with strike prices that are more than $5 from the current values of the options classes in the Program. The Exchange would delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, Nasdaq could grant member requests to add strikes and/or maintain strikes in certain options classes in series eligible for delisting.

Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed options classes. Nasdaq expects that the proposed delisting policy will be adopted by other options exchanges that amend their rules to employ a similar expansion of the Program.

With regard to the impact on system capacity, Nasdaq has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

The Exchange believes that the Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, Nasdaq requests an expansion of the current Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that expanding the current $1 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in greater number of securities.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has

[4] *See supra* note 3. *See also.* Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR–Phlx–2002–55); 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR–Phlx–2004–38); and 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008) (SR–Phlx–2008–01).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to implement its proposed expansion of the Program contemporaneously with other exchanges,[9] and respond to increased customer demand for $1 strikes without delay.[10] Therefore, the Commission designates the proposal operative upon filing. The Commission expects that the Exchange will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

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.

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 No. SR–NASDAQ–2009–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–025. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2009–025 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6328 Filed 3–23–09; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 met this requirement.

[9] *See* Securities Exchange Act Release No. 59587 (March 17, 2009) (SR–ISE–2009–04, SR–CBOE–2009–001, SR–NYSEArca–2009–10, and SR–NYSEALTR–2009–11) (Order Granting Accelerated Approval of Proposed Rule Changes, as Amended, to Expand the $1 Strike Program).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59590; File No. SR–Phlx–2009–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Related to the $1 Strike Price Program

March 17, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 16, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Phlx Rule 1012 (Series of Options Open for Trading) to expand the Exchange's $1 Strike Price Program (the ''Program'').[4] The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The $1 Strike Price Program was initially approved on June 11, 2003, and was then extended several times until June 5, 2008. *See* Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR–Phlx–2002–55); 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR–Phlx–2004–38); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (SR–Phlx–2005–35); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006) (SR–Phlx–2006–36); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR–Phlx–2007–29). The program was subsequently expanded and made permanent in 2008. *See* Securities Exchange Act Release No. 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008) (SR–Phlx–2008–01).

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 purpose of this proposed rule change is to modify Phlx Rule 1012 to expand the Program to allow the Exchange to select 55 individual stocks on which options may be listed at $1 strike price intervals and to expand the price range on which the Exchange may list such options.

Currently, the Program allows Phlx to select a total of 10 individual stocks on which option series may be listed at $1 strike price intervals. In order to be eligible for selection into the Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the Program, the Exchange may list strike prices at $1 intervals from $3 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list $1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules. The Exchange may not list long-term option series (''LEAPS'') at $1 strike price intervals for any class selected for the Program. The Exchange also is restricted from listing any series that would result in strike prices being $0.50 apart.

The Exchange now proposes to expand the Program to allow Phlx to select a total of 55 individual stocks on which option series may be listed at $1 strike price intervals, and to expand slightly the price range on which the Exchange may list $1 strikes, i.e., from $1 to $50. The existing restrictions on listing $1 strikes would continue, i.e., no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day, and Phlx is restricted from listing any series that would result in strike prices being $0.50 apart.

As stated in the Commission order that initially approved Phlx's Program and in subsequent extensions and expansions of the Program,[5] Phlx believes that $1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. Indeed, member firms representing customers have repeatedly requested that Phlx seek to expand the Program in terms of the number of classes on which option series may be listed at $1 strike price intervals. The Exchange notes that current market conditions, in which the number of securities trading below $50 has increased dramatically, further warrant the expansion of the Program.

The Exchange is also proposing to set forth a delisting policy. Specifically, the Exchange would, on a monthly basis, review series that were originally listed under the Program with strike prices that are more than $5 from the current values of the options classes in the Program. The Exchange would delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, Phlx could grant member requests to add strikes and/or maintain strikes in certain options classes in series eligible for delisting.

Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed options classes. Phlx expects that the proposed delisting policy will be adopted by other options exchanges that amend their rules to employ a similar expansion of the Program.

With regard to the impact on system capacity, Phlx has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

The Exchange believes that the Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, Phlx requests an expansion of the current Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to 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 Exchange believes that expanding the current $1 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in greater number of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and

(iii) become operative for 30 days after the date of the 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]

The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing. The Commission has determined that waiving the 30-day

[5] *See supra* note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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. Phlx has met this requirement.

operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to implement its proposed expansion of the Program contemporaneously with other exchanges,[10] and respond to increased customer demand for $1 strikes without delay.[11] Therefore, the Commission designates the proposal operative upon filing. The Commission expects that the Exchange will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

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.

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 No. SR–Phlx–2009–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–21. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2009–21 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6330 Filed 3–23–09; 8:45 am]

BILLING CODE 8010–01–P

[10] *See* Securities Exchange Act Release No. 59587 (March 17, 2009) (SR–ISE–2009–04, SR–CBOE–2009–001, SR–NYSEArca–2009–10, and SR–NYSEALTR–2009–11) (Order Granting Accelerated Approval of Proposed Rule Changes, as Amended, to Expand the $1 Strike Program).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59587; File Nos. SR–ISE–2009–04, SR–CBOE–2009–001, SR–NYSEArca–2009–10, and SR–NYSEALTR–2009–11]

Self-Regulatory Organizations; International Securities Exchange, LLC; Chicago Board Options Exchange, Incorporated; NYSE Arca, Inc.; and NYSE Alternext US LLC; Order Granting Accelerated Approval of Proposed Rule Changes, as Amended, To Expand the $1 Strike Program

March 17, 2009.

I. Introduction

Four options exchanges filed with the Securities and Exchange Commission (''Commission'') proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to expand the $1 Strike Program. Specifically, the International Securities Exchange, LLC (''ISE'') submitted its proposal on January 21, 2009;[3] the Chicago Board Options Exchange, Incorporated (''CBOE'') submitted its proposal on January 23, 2009;[4] NYSE Arca, Inc. (''NYSE Arca'') submitted its proposal on February 10, 2009; and NYSE Alternext US LLC (''NYSE Alternext'') submitted its proposal on February 10, 2009. The proposals submitted by ISE, CBOE, NYSE Arca, and NYSE Alternext (each an ''Exchange'' and collectively, the ''Exchanges'') are substantively identical. The proposals were published for comment in the **Federal Register** on February 19, 2009.[5] The Commission received one comment in response to CBOE's proposal.[6] This order approves the proposed rule changes, as amended in the cases of ISE and CBOE, on an accelerated basis.

II. Description of the Proposals

The $1 Strike Program currently allows each Exchange to select a total of 10 individual stocks on which option series may be listed at $1 strike price intervals. To be eligible for inclusion in the Program, an underlying stock must close below $50 in its primary market on the previous trading day. For each stock selected for the Program, each Exchange may list strike prices at $1 intervals from $3 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. Each Exchange also may list $1 strikes on any other option class designated by another securities exchange that employs a similar program under their respective rules. The Exchanges may not list long-term option series at $1 strike price intervals for any class selected for the program. Each Exchange is restricted from listing any series that would result in strike prices being $0.50 apart.

Each Exchange has proposed to amend its rules to expand the $1 Strike

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ISE filed Amendment Nos. 1 and 2 to its proposal on February 9, 2009 and February 10, 2009, respectively.

[4] CBOE filed Amendment No. 1 to its proposal on February 4, 2009.

[5] *See* Securities Exchange Act Release Nos. 59377 (February 10, 2009), 74 FR 7719 (SR–ISE–2009–04); 59378 (February 10, 2009), 74 FR 7711 (SR–CBOE–2009–001); 59395 (February 11, 2009), 74 FR 7710 (SR–NYSEArca–2009–10); and 59394 (February 11, 2009), 74 FR 7722 (SR–NYSEALTR–2009–11).

[6] *See* Letter to Secretary, Commission, from Thomas R. Keyes III, CPA, J.D., dated February 21, 2009, regarding SR–CBOE–2009–001.

Program to allow each Exchange to select a total of 55 individual stocks on which option series may be listed at $1 strike price intervals, and to expand slightly the price range on which the Exchange may list $1 strikes, *i.e.*, from $1 to $50. The existing restrictions on listing $1 strikes, as outlined above, will continue. The provision that each Exchange may also list $1 strikes on any other option class designated by another securities exchange that employs a similar program under their respective rules will remain unchanged.[7]

Each Exchange also has proposed to add a delisting policy. Specifically, each Exchange will, on a monthly basis, review series listed under the $1 Strike Program with a strike price more than $5 from the current value of the underlying security. Each Exchange will delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding each proposed delisting policy, each Exchange will be permitted to grant member requests to add strikes and/or maintain strikes in series eligible for delisting. In addition, each proposed delisting policy provides that if the Exchange identifies series for delisting, it shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed options classes.

Each Exchange represented in its filing that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of options series as proposed by this filing. Each Exchange also represented that it believes its $1 Strike Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security, and, further, that it has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. Each Exchange also stated in its filing that current market conditions, in which the number of securities trading below $50 has increased dramatically, further warrant the expansion of the Program.

The Commission received one comment letter in support of the proposed rule change.[8] The commenter described himself as an individual retail non-professional investor and stated that ''$1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower price stocks, by allowing investors to establish equity options positions that are better tailored to meet their investment objectives.'' [9] The commenter added that the recent general decline in stock prices has resulted in several stocks being below $3, the lowest option strike price currently available in the $1 Strike Program, and stated that trading options at the $2 or $1 strike price levels would enable him to minimize losses and ''position [his] portfolio for enhanced future gains.'' [10]

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Changes

After careful review, the Commission finds that the respective proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the respective proposed rule changes are consistent with Section 6(b)(5) of the Act [12] in that they are designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission notes that the Exchanges have represented that current market conditions have resulted in a dramatic increase in the number of securities trading below $50. The Commission believes that the proposed expansions to the $1 Strike Program should provide investors with added flexibility in the trading of equity options and further the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives, particularly given current market conditions. The Commission also believes that, with the addition of the delisting policy, the proposals strike a reasonable balance between the Exchanges' desire to accommodate market participants by offering a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes.

In approving the respective proposed rule changes, the Commission has relied on each Exchange's representation that it has the necessary systems capacity to support the new options series that will be listed under this proposal. Further, the Commission expects that each Exchange will continue to monitor the trading volume associated with the additional options series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of such Exchange's, OPRA's, and vendors' automated systems.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act [13] for approving the proposals prior to the thirtieth day after the date of publication in the **Federal Register**. The Exchanges have represented that they continue to receive customer requests to expand the $1 Strike Program as soon as possible, and have requested accelerated approval so that each Exchange may respond to increased customer demand for $1 strikes without delay.[14] In their requests for acceleration, ISE and CBOE also represent that the $1 Strike Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. CBOE further states that such advantages will be particularly beneficial under current market conditions. In addition, the only comment letter received on the filings was supportive of the expansion.[15] Accordingly, the Commission finds there is good cause, consistent with Section 6(b)(5) of the Act [16] to approve the Exchanges' proposals on an accelerated basis.

[7] CBOE also proposed to amend its $1 Strike Program by eliminating from Rule 24.9.11 the provision stating that if CBOE lists strike prices in $1 intervals in the Mini-SPX options class, the number of classes CBOE can select to participate in the $1 Strike Program is reduced by one.

[8] *See supra* note 4.

[9] *Id.*

[10] *Id.*

[11] In approving these proposed rule changes, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] *See* e-mails from Samir Patel, Assistant General Counsel, ISE; Patrick Sexton, Associate General Counsel, CBOE; and Andrew Stevens, Chief Counsel, U.S. Equities & Derivatives, NYSE Euronext, Inc. on behalf of NYSE Arca and NYSE Alternext; to Nathan Saunders, Special Counsel, and Heidi Pilpel, Special Counsel, Division of Trading and Markets, Commission, on March 16, 2009.

[15] *See supra* note 6.

[16] 15 U.S.C. 78s(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule changes, as amended (SR–ISE–2009–04; SR–CBOE–2009–001; SR–NYSEArca–2009–10; and SR–NYSEALTR–2009–11) be, and they hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6327 Filed 3–23–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59585; File No. SR–CBOE–2009–017]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Complex Order Book

March 17, 2009.

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 March 13, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.53C, *Complex Orders on the Hybrid System,* to permit conversions and reversals [5] to be eligible for routing to the complex order book (''COB''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

When the Exchange originally adopted its electronic COB rule in 2005, the rule contained a provision related to the routing of conversions and reversals. Specifically, the rule provided that conversions and reversals will not be eligible for routing to the COB and that, when the Exchange determines to allow conversions and reversals to route to COB, it will submit to the Commission a rule filing pursuant to Section 19(b)(3)(A) of the Act.[6]

The Exchange has enhanced its COB system functionality and has determined to permit conversions and reversals to be routed to COB. As such, as provided in the rule, this rule change is being submitted pursuant to Section 19(b)(3)(A) to eliminate the restriction on routing conversions and reversals to COB. Conversions and reversals, as well as any other complex orders with stock that have more than one option leg, will be handled by COB in the same manner as stock-option orders that have only one option leg with one exception.[7]

For stock-option orders that have only one option leg, the rule currently provides that the option leg will not be executed on the Hybrid System at the Exchange's best bid (offer) in that series if one or more public customer orders are resting at that price on the electronic book, unless the option leg trades with such public customer order(s). This COB provision is consistent with CBOE's open outcry priority rules for stock-option orders that have only one option leg.[8] For conversions, reversals and other complex orders with stock that have more than one option leg, the rule text will clarify that this provision will apply only if there are public customer orders resting on the Hybrid System at the Exchange's best bid (offer) in the electronic book for each of the options legs of the conversion, reversal or stock-option order. Thus, the options legs of such an order would not execute on the Hybrid System at the Exchange's best bid (offer) if one or more public customer orders are resting at that price in the electronic book in *each* of the options legs, unless the options legs trade with such public customer orders. This proposed COB provision is consistent with CBOE's open outcry priority rules for stock-option orders that have more than one option leg.[9]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [10] in general and furthers the objectives of Section 6(b)(5) of the Act [11] in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the addition of conversions and reversals to the list of complex orders eligible for electronic handling under Rule 6.53C is a significant enhancement for investors

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[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] A conversion (reversal) order is an order involving the purchase (sale) of a put option and the sale (purchase) of a call option in equivalent units with the same strike price and expiration in the same underlying security, and the purchase (sale) of the related instrument. *See* Rule 6.53C(a)(9).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] As a result of being eligible for COB, these complex orders will also be eligible for electronic auction via the complex order auction (''COA''), the automated improvement mechanism (''AIM'') and/or the solicitation auction mechanism (''AIM SAM''). *See* Rules 6.53C.06, 6.74A.07 and 6.74B.01.

[8] In open outcry, stock-option orders that have only one option leg have priority over bid (offers) of the trading crowd, but not over bids (offers) in the public customer limit order book. *See, e.g.*, Rules 6.45A(b)(ii) and 6.45B(b)(ii).

[9] In open outcry, stock-option orders that have more than one option leg are handled in the same manner as other complex orders that have more than one option leg and, as such, have priority over equivalent bids (offers) in the individual series legs that are represented in the trading crowd or in the public customer limit order book provided at least one leg of the order betters the corresponding bid (offer) in the public customer limit order book by at least the minimum trading increment or a $0.01 increment, which increment shall be determined by the Exchange on a class-by-class basis. Id.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

seeking automated handling of conversions and reversals.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[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.

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–CBOE–2009–017 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–017. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–017 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6404 Filed 3–23–09; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). The CBOE satisfied the requirement under Rule 19b–4(f)(6)(iii) that the CBOE give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59495A; File No. SR–FINRA–2008–052]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to the Adoption of FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) in the Consolidated FINRA Rulebook; Correction

March 18, 2009.

In FR Doc. E9–5212, for Tuesday, March 11, 2009, on page 10633, third column, footnote 8, the text is revised to read:

The text of the proposed new FINRA rule, marked to show changes from NASD IM–2110–7 and to show that NASD IM–2110–7 is to be deleted in its entirety from the Transitional Rulebook, is attached as Exhibit 5 to the proposed rule change and is available at *http://www.finra.org/Industry/Regulation/RuleFilings/2008/P117330.* FINRA has transferred NASD Rule 2110 to the Consolidated FINRA Rulebook without change as FINRA Rule 2010. Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) [File No. SR–FINRA–2008–028].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[1]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6353 Filed 3–23–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59592; File No. SR–NYSE–2009–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending the NYSE Rule Book To Delete References to Specific Exchange Systems and To Remove the Requirement That Opening Transactions Receive Specific Designations Pursuant to NYSE Rules 79A and 115A

March 17, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the

[1] 17 CFR 200.30–(a)(12).

[1] 15 U.S.C.78s(b)(1).

''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 13, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Rule Book to delete references to specific Exchange systems and to remove the requirement that opening transactions receive specific designations pursuant to NYSE Rules 79A and 115A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange proposes to amend its rule book to delete references to specific Exchange systems. The Exchange seeks to replace references to ''DOT'', ''SuperDot'', ''Limit Order System'' and ''Opening Automated Report Service'' (''OARS'') with ''Exchange systems''. In addition, the Exchange seeks to remove the requirement that certain opening transactions be designated ''OPD'', ''OPN'' pursuant to NYSE Rule 79A (Miscellaneous Requirements on Stock Market Procedures) and Rule 115A (Orders at Opening or in Unusual Situations).[4]

Background

Exchange Systems

On March 1, 1976, the Exchange commenced the operation of its Designated Order Turnaround (''DOT'') system. It was re-designated ''SuperDot'' (or sometimes cited as ''SuperDOT'') in 1984. Today, SuperDot® is an electronic order-routing system used by NYSE member organizations to send market and limit orders directly to the trading post where the security is traded. The system provides members and member organizations the ability to enter and manage their order flow on the Exchange electronically. After the orders have been executed, SuperDot uses the same electronic circuit to send post-trade reports back to member firms.

At one time, the Exchange's Limit Order System electronically filed orders to be executed when and if the specific limit price of an order is reached and electronically updates the Display Book. Good 'til Cancelled orders not executed on the day of submission are automatically stored in this system until executed or cancelled.

When first introduced in 1980,[5] OARS was designed to facilitate more efficient and accurate processing of orders received by the Exchange prior to the opening, a critical point in the trading day. It provided automation of certain clerical functions carried out at the trading post, issued reports on executions and substantially reduced the number of potential unmatched trades since processing was done electronically.

OARS accepts member organizations' pre-opening market orders for execution at the opening. OARS automatically pairs buy and sell orders and presents the imbalance to the DMM up to the time of the opening to assist the DMM in determining the opening price. Once that price is determined and transmitted by the DMM, the OARS system assigns the price to the orders it holds and issues reports back to the entering firms and brokers immediately.

Opening Report ''OPD'' Opened Designation

NYSE Rule 79A.20 requires a Designated Market Maker to obtain prior Floor Official approval if a security is going to open at one or more dollars away from the closing price at the Exchange when the closing price was under $20 a share, or two dollars or more away from the closing price at the Exchange when the closing price was $20 per share or more. Under (c) of Rule 79A.20, when such a transaction is an opening trade, the symbol ''OPD'', which means opened, will appear next to the transaction when published to the Consolidated Tape.

The ''OPD'' designation traces back to when executions were manually entered to be reported to the Consolidated Tape. The ''OPD'' designation served two functions. First, because getting Floor Official approval required time, securities that were opening at one or more dollars away from the closing price usually had delayed openings. The ''OPD'' designation provided notice that the stock had in fact commenced trading. In addition, ''OPD'' provided a validation to the individual charged with manually entering the opening transaction information that the price associated with the opening transaction being reported was valid as the transaction would be a dollar or more away from the closing price.

NYSE Rule 115A.30 provides that orders stored in OARS will receive ''OPN'' or ''such other universal contra as the Exchange may designate'' to identify that the trade took place in Exchange systems at the opening. ''OPN'' is used as an omnibus account designation to identify market orders executed through OARS to the member or member organization receiving the report of execution of the trade.

Proposed Amendments

Exchange Systems

The Exchange is enhancing its systems to create a strong platform for technological growth that offers its customers the most comprehensive set of trading technology solutions to meet their needs and expectations. In order to attain this goal, the Exchange is continually upgrading its systems that accept, manage and report orders. In this process, legacy systems that once performed the functions governed by certain NYSE Rules may be upgraded or replaced in their entirety. In order to keep pace with the enhancements to its technology, the Exchange seeks to replace references to specific systems that perform a function and replace it with the phrase ''Exchange systems''.

The Exchange therefore proposes to amend NYSE Rules 123C (Market on The Close Policy And Expiration Procedures), 123D (Openings and Halts in Trading), 130 (Overnight Comparison of Exchange Transactions) and 132B (Order Tracking Requirements) to replace any references to ''Designated

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that a companion filing is being made by NYSE Alternext LLC to amend similar rules of that self-regulatory organization. *See* SR–NYSE Alternext–2009–28 (to be filed March 13, 2009).

[5] *See* Securities Exchange Act Release No. 16649 (March 13, 1980) 45 FR 18541 approving SR–NYSE–80–09 and Securities Exchange Act Release No. 17132 (September 8, 1980) 45 FR 60526 (September 12, 1980), approving SR–NYSE–80–25.

Order Turnaround'', ''Limit Order System'', ''DOT'', ''SuperDot'' or ''SuperDOT'' with ''Exchange systems''.

The OARS system functioning will be carried out through similar functioning in the Display Book®,[6] and as a result, there will no longer be a separate system for processing openings. As a result, the Exchange seeks to remove the references to ''Opening Automated Report Service'' from .30 in the Supplementary Material to Rule 91 (Taking or Supplying Securities Named in Order), from various references in .30 of Rule 115A (Orders at Opening or in Unusual Situations) and in .10 under Supplementary Material to Rule 134 (Differences and Omissions—Cleared Transactions). The Exchange seeks to insert the phrase ''Exchange systems'' in Rules 91.10, 115A.30 and 134 to replace the references to the ''Opening Automated Report Service'' or ''the Service''. In addition, the Exchange proposes to substitute the phrase ''securities on the Exchange'' and similar wording to replace the phrase ''designated stock'', ''designated stocks'' or ''stocks''. In practice, the instant rules apply to all instruments traded on the Exchange, which include structured products such as capital trusts and warrants. As such, the broader term ''securities'' more accurately reflects the types of instruments traded on the Exchange than the narrower term ''stock''. Finally, the Exchange proposes to remove the specific references to ''OPN and OARS'' as contras in Rule 115A and proposes to add language to the Rule to indicate that the designation by the Exchange of universal contras for orders stored in Exchange systems will not be deemed inconsistent with Exchange Rules 121.10 and 138. Both these rules allow that a substitute name may be used with respect to trade reports and the use of universal contras designated by the Exchange is deemed consistent with those requirements.

''OPD'' and ''OPN'' Designations

These enhancements to Exchange systems have also negated the need for the ''OPD'' and ''OPN'' designations. Currently Exchange systems process orders, allocate the executed shares to the various participants, and publish reports of executions automatically. Given this change from how interest was processed in the manual environment, ''OPD'' no longer serves the purpose of validating the transaction price and is therefore no longer necessary, as the opening price is systemically validated. As such, the Exchange seeks through this filing to eliminate the requirement pursuant to Rule 79A.20(c) that opening transactions at one or more dollars away from the closing price ''be accompanied when published on tape by the symbol 'OPD' ''. In addition, as explained above, the Exchange also seeks to remove the reference to ''OPN'' in Rule 115A since, with the transference of the functions of OARS to the NYSE Display Book, the universal contra of ''OPN'' will no longer be used.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5)[7] of the Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. The Exchange believes that the rescission of the references to outdated systems and processes promotes just and equitable principles of trade and protects investors and the public interest because it allows the Exchange to upgrade its systems in a timely manner thus providing customers the most comprehensive and all-encompassing set of trading technology solutions and mechanisms for efficient executions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange 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. By waiving the operative delay, the proposed rule change may take effect on or about March 16, 2009, when the Exchange expects to install these technological changes. A waiver of the 30-day operative delay will also allow timely removal of outdated language in Exchange rules and avoid any potential confusion, and it will ensure that Exchange rule text is more accurate. For these reasons, the Commission designates the proposed rule change as operative upon filing.[11]

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.[12]

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.

[6] Display Book® is an order management and execution facility that receives and displays orders to the DMM and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. In addition, the Display Book is connected to a variety of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's effect on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(3)(C).

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–NYSE–2009–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–29. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–NYSE–2009–29 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6354 Filed 3–23–09; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59593; File No. NYSEALTR–2009–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC Amending NYSE Alternext Rules To Delete References to Specific Exchange Systems and To Remove the Requirement that Opening Transactions Receive Specific Designations Pursuant to NYSE Alternext Rules 79A and 115A. These Amendments are Proposed To Conform to Amendments Filed by the New York Stock Exchange LLC [1]

March 17, 2009.

Pursuant to Section 19(b)(1) [2] of the Securities Exchange Act of 1934 (the ''Act'') [3] and Rule 19b–4 thereunder,[4] notice is hereby given that, on March 13, 2009, NYSE Alternext U.S. LLC (the ''Exchange'' or ''NYSE Alternext'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Alternext rules to delete references to specific Exchange systems and to remove the requirement that opening transactions receive specific designations pursuant to NYSE Alternext Rules 79A and 115A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] *See* SR–NYSE–2009–29, to be filed March 13, 2009.

[2] 15 U.S.C. 78s(b)(1).

[3] 15 U.S.C. 78a.

[4] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange proposes to amend its rule book to delete references to specific Exchange systems. The Exchange seeks to replace references to ''DOT'', ''SuperDot'', ''Limit Order System'' and ''Opening Automated Report Service'' (''OARS'') with ''Exchange systems''. In addition, the Exchange seeks to remove the requirement that certain opening transactions be designated ''OPD'', ''OPN'' pursuant to NYSE Alternext Rule 79A (Miscellaneous Requirements on Stock Market Procedures) and Rule 115A (Orders at Opening or in Unusual Situations).

I. Background

As described more fully in a related rule filing,[5] NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, the Exchange's predecessor, the American Stock Exchange LLC (''Amex''), a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext U.S. LLC, and continues to operate as a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the ''Act'').[6] The effective date of the Merger was October 1, 2008.

In connection with the Merger, on December 1, 2008, the Exchange relocated all equities trading conducted on the Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, to trading systems and facilities located at 11 Wall Street, New York, New York (the ''Equities Relocation''). The Exchange's equity trading systems and facilities at 11 Wall Street (the ''NYSE Alternext Trading Systems'') are operated by the NYSE on behalf of the Exchange.[7]

As part of the Equities Relocation, NYSE Alternext adopted NYSE Rules 1–1004, subject to such changes as necessary to apply the Rules to the Exchange, as the NYSE Alternext Equities Rules to govern trading on the

[5] *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex 2008–62) (approving the Merger).

[6] 15 U.S.C. 78f.

[7] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation).

NYSE Alternext Trading Systems.[8] The NYSE Alternext Equities Rules, which became operative on December 1, 2008, are substantially identical to the current NYSE Rules 1–1004 and the Exchange continues to update the NYSE Alternext Equities Rules as necessary to conform with rule changes to corresponding NYSE Rules filed by the NYSE.

On March 1, 1976, the NYSE commenced the operation of its Designated Order Turnaround (''DOT'') system. It was re-designated ''SuperDot'' (or sometimes cited as ''SuperDOT'') in 1984. Today, SuperDot® is an electronic order-routing system used by NYSE and NYSE Alternext member organizations to send market and limit orders directly to the trading post where the security is traded. The system provides members and member organizations the ability to enter and manage their order flow on the NYSE and the Exchange electronically. After the orders have been executed, SuperDot uses the same electronic circuit to send post-trade reports back to member firms.

At one time, the NYSE's Limit Order System electronically files orders to be executed when and if the specific limit price of an order is reached and electronically updates the Display Book. Good 'til Cancelled orders not executed on the day of submission are automatically stored in this system until executed or cancelled.

When first introduced on the NYSE in 1980,[9] OARS was designed to facilitate more efficient and accurate processing of orders received by the NYSE prior to the opening, a critical point in the trading day. It provided automation of certain clerical functions carried out at the trading post, issued reports on executions and substantially reduced the number of potential unmatched trades since processing was done electronically.

OARS accepts member organizations' pre-opening market orders for execution at the opening. OARS automatically pairs buy and sell orders and presents the imbalance to the DMM up to the time of the opening to assist the DMM in determining the opening price. Once that price is determined and transmitted by the DMM, the OARS system assigns the price to the orders it holds and issues reports back to the entering firms and brokers immediately.

Opening Report ''OPD'' Opened Designation

NYSE Alternext Rule 79A.20 requires a Designated Market Maker to obtain prior Floor Official approval if a security is going to open at one or more dollars away from the closing price at the Exchange when the closing price was under $20 a share, or two dollars or more away from the closing price at the Exchange when the closing price was $20 per share or more. Under (c) of Rule 79A.20, when such a transaction is an opening trade, the symbol ''OPD'', which means opened, will appear next to the transaction when published to the Consolidated Tape.

The ''OPD'' designation traces back to when executions were manually entered to be reported to the Consolidated Tape. The ''OPD'' designation served two functions. First, because getting Floor Official approval required time, securities that were opening at one or more dollars away from the closing price usually had delayed openings. The ''OPD'' designation provided notice that the stock had in fact commenced trading. In addition, ''OPD'' provided a validation to the individual charged with manually entering the opening transaction information that the price associated with the opening transaction being reported was valid as the transaction would be a dollar or more away from the closing price.

NYSE Alternext Rule 115A.30 provides that orders stored in OARS will receive ''OPN'' or ''such other universal contra as the Exchange may designate'' to identify that the trade took place in Exchange systems at the opening. ''OPN'' is used as an omnibus account designation to identify market orders executed through OARS to the member or member organization receiving the report of the execution of the trade.

Proposed Amendments

Exchange Systems

The NYSE, and therefore NYSE Alternext, is enhancing its systems to create a strong platform for technological growth that offers its customers the most comprehensive set of trading technology solutions to meet their needs and expectations. In order to attain this goal, the NYSE is continually upgrading its systems that accept, manage and report orders. In this process, legacy systems that once performed the functions governed by certain NYSE and NYSE Alternext Rules may be upgraded or replaced in their entirety. In order to keep pace with the enhancements to its technology, the Exchange seeks to replace references to specific systems that perform a function and replace it with the phrase ''Exchange systems''.

The Exchange therefore proposes to amend NYSE Alternext Rules 123C (Market on The Close Policy And Expiration Procedures), 123D (Openings and Halts in Trading), 130 (Overnight Comparison of Exchange Transactions) and 132B (Order Tracking Requirements) to replace any references to ''Designated Order Turnaround'', ''Limit Order System'', ''DOT'', ''SuperDot'' or ''SuperDOT'' with ''Exchange systems''.

The OARS system functioning will be carried out through similar functioning in the Display Book®,[10] and as a result, there will no longer be a separate system for processing openings. As a result, the Exchange seeks to remove the references to ''Opening Automated Report Service'' from .30 in the Supplementary Material to NYSE Alternext Rule 91 (Taking or Supplying Securities Named in Order), from various references in .30 of NYSE Alternext Rule 115A (Orders at Opening or in Unusual Situations) and in .10 under Supplementary Material to Rule 134 (Differences and Omissions—Cleared Transactions). The Exchange seeks to insert the phrase ''Exchange systems'' in NYSE Alternext Rules 91.10, 115A.30 and 134 to replace the references to the ''Opening Automated Report Service'' or ''the Service''. In addition, the Exchange proposes to substitute the phrase ''securities on the Exchange'' and similar wording to replace the phrase ''designated stock'', ''designated stocks'' or ''stocks''. In practice, the instant rules apply to all instruments traded on the Exchange, which include structured products such as capital trusts and warrants. As such,

[8] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex 2008–63) (approving the Equities Relocation); Securities Exchange Act Release No. 58833 (October 22, 2008), 73 FR 64642 (October 30, 2008) (SR–NYSE–2008–106) and Securities Exchange Act Release No. 58839 (October 23, 2008), 73 FR 64645 (October 30, 2008) (SR–NYSEALTR–2008–03) (together, approving the Bonds Relocation); Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10) (adopting amendments to NYSE Alternext Equities Rules to track changes to corresponding NYSE Rules); Securities Exchange Act Release No. 59027 (November 28, 2008), 73 FR 73681 (December 3, 2008) (SR–NYSEALTR–2008–11) (adopting amendments to Rule 62—NYSE Alternext Equities to track changes to corresponding NYSE Rule 62).

[9] *See* Securities Exchange Act Release No. 16649 (March 13, 1980) 45 FR 18541 approving SR–NYSE–80–09 and Securities Exchange Act Release No. 17132 (September 8, 1980) 45 FR 60526 (September 12, 1980), approving SR–NYSE–80–25.

[10] Display Book® is an order management and execution facility that receives and displays orders to the DMM and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. In addition, the Display Book is connected to a variety of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

the broader term ''securities'' more accurately reflects the types of instruments traded on the Exchange than the narrower term ''stock''. Finally, the Exchange proposes to remove the specific references to ''OPN and OARS'' as contras in NYSE Alternext Rule 115A and proposes to add language to the Rule to indicate that the designation by the Exchange of universal contras for orders stored in Exchange systems will not be deemed inconsistent with NYSE Alternext Rules 121.10 and 138. Both these rules allow that a substitute name may be used with respect to trade reports and the use of universal contras designated by the Exchange is deemed consistent with those requirements.

''OPD'' and ''OPN'' Designations

These enhancements to NYSE systems have also negated the need for the ''OPD'' and ''OPN'' designations. Currently NYSE systems process orders, allocate the executed shares to the various participants, and publish reports of executions automatically. Given this change from how interest was processed in the manual environment, ''OPD'' no longer serves the purpose of validating the transaction price and is therefore no longer necessary, as the opening price is systemically validated. As such, the Exchange seeks through this filing to eliminate the requirement pursuant to NYSE Alternext Rule 79A.20(c) that opening transactions at one or more dollars away from the closing price ''be accompanied when published on tape by the symbol ''OPD''. In addition, as explained above, the Exchange also seeks to remove the reference to ''OPN'' in NYSE Alternext Rule 115A since, with the transference of the functions of OARS to the NYSE Display Book, the universal contra of ''OPN'' will no longer be used.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5) [11] of the Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest. The Exchange believes that the rescission of the references to outdated systems and processes promotes just and equitable principles of trade and protects investors and the public interest because it allows the Exchange to upgrade its systems in a timely manner thus providing customers the most comprehensive and all-encompassing set of trading technology solutions and mechanisms for efficient executions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[14] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange 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. By waiving the operative delay, the proposed rule change may take effect on or about March 16, 2009, when the Exchange expects to install these technological changes. A waiver of the 30-day operative delay will also allow timely removal of outdated language in Exchange rules and avoid any potential confusion, and it will ensure that Exchange rule text is more accurate. For these reasons, the Commission designates the proposed rule change as operative upon filing.[15]

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.[16]

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 NYSEALTR–2009–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number NYSEALTR–2009–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE Alternext has satisfied this requirement.

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's effect on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(3)(C).

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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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 NYSEALTR–2009–28 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6405 Filed 3–23–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59582; File No. SR–NASDAQ–2008–102]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change as Modified by Amendment No. 2 Thereto To Establish a Pilot Program for NASDAQ Basic Data Feeds

March 16, 2009.

I. Introduction

On December 23, 2008, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a five-month pilot to offer a real-time data feed combining both NASDAQ's Best Bid and Offer (''QBBO'') and the ''NASDAQ Last Sale'' (collectively, ''NASDAQ Basic''). On January 8, 2009, NASDAQ filed Amendment No. 1 to the proposed rule change. On January 12, 2009, NASDAQ replaced the original filing and Amendment No. 1 by filing Amendment No. 2 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on January 22, 2009.[3] The Commission received one comment letter on the proposal.[4] NASDAQ responded to the comment letter on March 3, 2009.[5] This order approves the proposed rule change, as modified by Amendment No 2.

II. Description of the Proposal

NASDAQ proposes to establish NASDAQ Basic, a five-month pilot to offer real-time quotation data in combination with last sale data solely from the NASDAQ Market Center. There will be no fees for NASDAQ Basic for the first month of the pilot.

NASDAQ Basic is a ''Level 1'' product containing two data elements: (1) Quotation information from the NASDAQ Market Center and (2) last sale data from the NASDAQ Market Center. NASDAQ Basic will be available in three forms, NASDAQ Basic for NASDAQ, NASDAQ Basic for NYSE, and NASDAQ Basic for Alternext. NASDAQ stated that it designed NASDAQ Basic to meet the needs of current and prospective subscribers that do not need or are unwilling to pay for the consolidated data provided by the consolidated Level 1 products.

NASDAQ proposes to charge each professional user of the NASDAQ Basic product, a per subscriber monthly charge of $10 for NASDAQ-listed stocks, $5 for NYSE-listed stocks, and $5 for Alternext-listed stocks, and charge each non-professional subscriber a per subscriber monthly charge of $0.50 for NASDAQ-listed stocks, $0.25 for NYSE-listed stocks, and $0.25 for Alternext-listed stocks. For users that do not require a monthly subscription, there will be a per query option available for NASDAQ Basic, with a fee of $0.0025 for NASDAQ-listed stocks, $0.0015 for NYSE-listed stocks, and $0.0015 for Alternext-listed stocks. Vendors that report per query usage to NASDAQ are permitted to convert to monthly subscriptions when the cost of individual users' queries exceeds the cost of the monthly subscription.

As with the distribution of other NASDAQ proprietary products, all distributors of NASDAQ Basic will be assessed a monthly Distributor Fee in addition to any applicable usage fees. Each Distributor of NASDAQ Basic for NASDAQ-listed stocks shall pay a monthly fee of $1,500 for either internal or external distribution or both. Each Distributor of NASDAQ Basic for NYSE-listed stocks will pay a fee of $250 per month for internal distribution or $625 per month external distribution. Each Distributor of NASDAQ Basic for Alternext-listed stocks will pay a fee of $250 per month for internal distribution or $625 per month external distribution. Distributors that pay the fee for external distribution of NASDAQ Basic for NYSE and Alternext may distribute the same data internally for no additional fee. In addition, each Distributor that receives Direct Access to the NASDAQ Basic will also pay a monthly fee of $2,000 for NASDAQ-listed stocks, $1,000 for NYSE-listed stocks, and $1,000 for Alternext-listed stocks.

III. Summary of Comments Received and NASDAQ's Responses

The Commission received one comment letter from the Market Data Subcommittee of the Securities Industry and Financial Markets Association (''SIFMA'') opposing NASDAQ's proposed rule change.[6] As an initial matter, SIFMA objects to NASDAQ's application of the ''fair and reasonable'' test announced in the NYSE Arca Order[7] to NASDAQ Basic's fees.[8] NASDAQ notes that the NYSE Arca Order is a valid agency action; therefore, NASDAQ believes it is proper to apply the ''fair and reasonable'' test to the NASDAQ Basic proposal.[9] SIFMA notes that SIFMA members that sign up for NASDAQ's new market data feeds will still be required to purchase the consolidated data for trading purposes,[10] and, if the other exchanges also repackage their own best bids and offers and last sale prices, adding together all of these fees could result in firms paying more, not less, for overall market data, and could potentially cause considerable technological and administrative burdens.[11] NASDAQ agrees that NASDAQ Basic is not a substitute for consolidated data when trading and order routing decisions can be implemented,[12] but rather a less expensive alternative to consolidated data when consolidated data is not required to be displayed, including portfolio measurement, back-office

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59244 (January 13, 2009), 74 FR 4065 (January 22, 2009) (''Notice'').

[4] *See* Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, Securities Industry and Financial Markets Association, to Elizabeth Murphy, Secretary, Commission, dated February 12, 2009 (''SIFMA Letter'').

[5] *See* Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ, to Elizabeth Murphy, Secretary, Commission, dated March 3, 2009 (''NASDAQ Response'').

[6] *Id.*

[7] *See infra* note 27.

[8] *See* SIFMA Letter at 2.

[9] *See* NASDAQ Response at 1.

[10] 17 CFR 242.603(c).

[11] *See* SIFMA Letter at 2.

[12] 17 CFR 242.603(c).

operations, and certain communications with the public.[13]

SIFMA also argues that NASDAQ's classification of this data as ''non-core'' is inaccurate and that the resulting application of the ''subject to significant competitive forces'' test announced in the NYSE Arca Order for meeting the fair and reasonable requirements of the Act is misplaced. SIFMA argues that best bids and offers and last sale prices—whether offered directly by an exchange or through a consolidating processor—should be classified as ''core data.'' [14] NASDAQ notes that in the NYSE Arca Order the Commission states that core data is only the data that Commission rules require to be consolidated and distributed to the public by a single central processor. NASDAQ notes that it produces NASDAQ Basic data voluntarily, and while NASDAQ Basic contains a subset of core data that overlap does not transform it into core data.[15] In addition, SIFMA disagrees with NASDAQ's assertion that this is a new and innovative market data product resulting from ''competitive'' forces.[16] NASDAQ notes that even though the price of consolidated data is not subject to competitive forces, NASDAQ Basic is nevertheless competitively constrained by the price of consolidated data.[17]

SIFMA finally notes that, in contrast with the NYSE OpenBook Ultra filing,[18] NASDAQ has not attempted to simplify administrative burdens by modernizing its unit of count for assessing fees, nor has it adopted enterprise pricing for NASDAQ Basic that would address longstanding issues that SIFMA identifies, such as the ''onerous'' application of the ''professional'' definition to online investors seeking per query (non-streaming) quotes. SIFMA urges the Commission, the Consolidated Tape Association, the NASDAQ UTP Plan, NASDAQ, and the other individual exchanges to implement a uniform unit of count working in cooperation with its committee to avoid the administrative burdens of different exchanges applying different units of count.[19] NASDAQ acknowledges SIFMA's suggestion to decrease the administrative burden of purchasing NASDAQ market data, but notes that the issue is unrelated to the Commission's review of the NASDAQ Basic proposal.[20]

IV. Discussion

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.[21] In particular, it is consistent with Section 6(b)(4) of the Act,[22] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[23] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[24] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[25] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[26]

The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[27] In the NYSE Arca Order, the Commission stated that ''when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.'' [28] It noted that the ''existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [29] If an exchange ''was subject to significant competitive forces in setting the terms of a proposal,'' the Commission will approve a proposal unless it determines that ''there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.'' [30]

As noted in the NYSE Arca Order, the standards in Section 6 of the Act and Rule 603 of Regulation NMS do not differentiate between types of data and therefore apply to exchange proposals to distribute both core data and non-core data. Core data is the best-priced quotations and comprehensive last-sale reports of all markets that the Commission, pursuant to Rule 603(b), requires a central processor to consolidate and distribute to the public pursuant to joint-SRO plans.[31] In contrast, individual exchanges and other market participants distribute non-core data voluntarily. The mandatory nature of the core data disclosure regime leaves little room for competitive forces to determine products and fees. Non-core data products and their fees are, by contrast, much more sensitive to competitive forces. The Commission therefore is able to use competitive forces in its determination of whether an exchange's proposal to distribute non-core data meets the standards of Section 6 and Rule 603. Because NASDAQ's instant proposal relates to the distribution of

[13] *See* NASDAQ Response at 1–2.

[14] *See* SIFMA Letter at 2–3.

[15] *See* NASDAQ Response at 2.

[16] *See* SIFMA Letter at 3.

[17] *See* NASDAQ Response at 2.

[18] *See* Securities Exchange Act Release No. 59198 (January 5, 2009), 74 FR 1268 (January 12, 2009) (SR–NYSE–2008–131).

[19] *See* SIFMA Letter at 3.

[20] *See* NASDAQ Response at 2.

[21] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b)(4).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(6).

[25] 17 CFR 242.603(a).

[26] NASDAQ is an exclusive processor of NASDAQ Basic data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

[27] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (''NYSE Arca Order''). In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to depth-of-book market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

[28] *Id.* at 74771.

[29] *Id.* at 74782.

[30] *Id.* at 74781.

[31] *See* 17 CFR 242.603(b). (''Every national securities exchange on which an NMS stock is traded and national securities association shall act jointly pursuant to one or more effective national market system plans to disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks. Such plan or plans shall provide for the dissemination of all consolidated information for an individual NMS stock through a single plan processor.'')

non-core data, the Commission will apply the market-based approach set forth in the NYSE Arca Order.

In the NYSE Arca Order, the Commission discussed two broad types of competitive forces that generally apply to exchanges in their distribution of a non-core data product—the need to attract order flow and the availability of data alternatives. These forces also applied to NASDAQ in setting the terms of this proposal for the NASDAQ Basic data product: (i) NASDAQ's compelling need to attract order flow from market participants; and (ii) the availability to market participants of alternatives to purchasing NASDAQ 's data.

Table 1 below provides a recent snapshot of the state of competition in the U.S. equity markets in the month of January 2009: [32]

TABLE 1—REPORTED SHARE VOLUME IN U.S.

Listed Equities during January 2009 (percent)

Trading venue	All stocks	NYSE-Listed	NASDAQ-Listed
NASDAQ	27.1	20.5	39.9
All Non-Exchange	26.7	26.2	31.0
NYSE Arca	17.9	15.7	15.8
NYSE	14.8	26.2	0.0
BATS	10.7	9.0	10.8
International Stock Exchange	1.3	1.4	1.4
National Stock Exchange	0.6	0.7	0.7
Chicago Stock Exchange	0.4	0.4	0.3
CBOE Stock Exchange	0.2	0.0	0.1
NYSE Alternext	0.1	0.0	0.0
NASDAQ OMX BX	0.0	0.0	0.0

The market share percentages in Table 1 strongly indicate that NASDAQ must compete vigorously for order flow to maintain its share of trading volume. The need to attract order flow imposes significant pressure on NASDAQ to act reasonably in setting its fees for NASDAQ market data, particularly given that the market participants that must pay such fees often will be the same market participants from whom NASDAQ must attract order flow. These market participants particularly include the large broker-dealer firms that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one trading venue to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival. Moreover, distributing data widely among investors, and thereby promoting familiarity with the exchange and its services, is an important exchange strategy for attracting order flow.[33]

In addition to the need to attract order flow, the availability of alternatives to NASDAQ Basic significantly affect the terms on which NASDAQ can distribute this market data.[34] In setting the fees for its NASDAQ Basic service, NASDAQ must consider the extent to which market participants would choose one or more alternatives instead of purchasing the exchange's data. For example, although the NASDAQ Basic data feed is separate from the core data feed made available pursuant to the joint-SRO plans,[35] all the information available in NASDAQ Basic is included in the core data feed. This core data must be provided to customers when trading and order-routing decisions can be implemented.[36] Data users will have a choice of purchasing NASDAQ Basic data for those contexts where core data is not required to be displayed, such as portfolio management, or simply providing core data in all contexts.

The various self-regulatory organizations, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data, as well as the core data feed, are all sources of competition in non-core data products. As Table 1 illustrates, share volume in U.S.-listed equities is widely dispersed among trading venues, and these venues are able to offer competitive data products as alternatives to NASDAQ Basic. The Commission believes that the availability of those alternatives, as well as the NASDAQ's compelling need to attract order flow, imposed significant competitive pressure on the NASDAQ to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because NASDAQ was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal and the comment letter does not provide such a basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NASDAQ–

[32] *Source:* ArcaVision (available at *www.arcavision.com*).

[33] *See* NYSE Arca Order, 73 FR at 74784 nn. 218–219 and accompanying text (noting exchange strategy of offering data for free as a means to gain visibility in the market place).

[34] *See* Richard Posner, *Economic Analysis of Law* § 9.1 (5th ed. 1998) (discussing the theory of monopolies and pricing). *See also* U.S. Dep't of Justice & Fed'l Trade Comm'n, Horizontal Merger Guidelines § 1.11 (1992), as revised (1997) (explaining the importance of alternatives to the presence of competition and the definition of markets and market power). Courts frequently refer to the Department of Justice and Federal Trade Commission merger guidelines to define product markets and evaluate market power. *See, e.g., FTC* v. *Whole Foods Market, Inc.*, 502 F. Supp. 2d 1 (D.D.C. 2007); *FTC* v. *Arch Coal, Inc.*, 329 F. Supp. 2d 109 (D.D.C. 2004). In considering antitrust issues, courts have recognized the value of competition in producing lower prices. *See, e.g., Leegin Creative Leather Products* v. *PSKS, Inc.*, 127 S. Ct. 2705 (2007); *Atlanta Richfield Co.* v. *United States Petroleum Co.*, 495 U.S. 328 (1990); *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574 (1986); *State Oil Co.* v. *Khan*, 522 U.S. 3 (1997); *Northern Pacific Railway Co.* v. *U.S.*, 356 U.S. 1 (1958).

[35] The three joint-industry plans are (1) the CTA Plan, which disseminates transaction information for securities primarily listed on an exchange other than Nasdaq, (2) the CQ Plan, which disseminates consolidated quotation information for securities primarily listed on an exchange other than Nasdaq, and (3) the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for securities primarily listed on Nasdaq.

[36] Rule 603(c) of Regulation NMS requires broker-dealers, if they provide any data to customers, also to provide core data in a context in which a trading or order-routing decision can be implemented. 17 CFR 242.603(c). The Commission emphasizes that NASDAQ Basic may not be used as a substitute for the distribution of core data that is required under Rule 603(c).

[37] 15 U.S.C. 78s(b)(2).

2008–102), as modified by Amendment No. 2, be, and it hereby is, approved on a five month pilot basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6398 Filed 3–23–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59591; File No. SR–NSX–2009–01]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NSX Fee Schedule To Implement a Program To Award Rebates for Liquidity Adding Zero Display Orders and Clarify the Definition of ''Liquidity Adding Average Daily Volume''

March 17, 2009.

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 February 27, 2009, National Stock Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX® '' or ''Exchange'') is proposing to amend the Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1(c) in order to (i) provide a rebate for adding liquidity in Zero Display Orders at one dollar or above in the Automatic Execution Mode of order interaction in the event that certain volume thresholds are achieved, (ii) provide a rebate for adding liquidity in Zero Display Orders at one dollar or above in the Order Delivery Mode of order interaction in the event that certain volume thresholds are achieved,[3] and (iii) clarify the definition of ''Liquidity Adding Average Daily Volume'' to account for partial calendar months.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to provide a liquidity provider rebate for Zero Display (or ''Dark'') Orders[4] entered in each of the Automatic Execution Mode of order interaction (''AutoEx'') and the Order Delivery Mode of order interaction (''Order Delivery'' or ''O/D'').[5] In each case, the rebates apply only to securities priced one dollar and higher, and only after certain volume thresholds are achieved.

AutoEx Liquidity Adding Zero Display Order Rebate

For securities trading at one dollar or higher in AutoEx, this rule change proposes to provide a progressively higher rebate applicable to shares executed as liquidity providing Zero Display Orders of ETP Holders who achieve both a ''Liquidity Adding Average Daily Volume'' (''Liquidity Adding ADV'') of at least 50,000 and, in the same period, achieve ''Total Average Daily Trading Volumes'' (''Total ADV'') of 1 million,[6] 15 million[7] and 30 million[8] shares (any such rebate hereinafter referred to as an ''AutoEx Liquidity Adding Zero Display Order Rebate'').

An ETP Holder needs to achieve two volume eligibility thresholds before receiving the proposed AutoEx Liquidity Adding Zero Display Order Rebate. First, an ETP Holder must achieve at least 50,000 shares of Liquidity Adding ADV in the applicable time period. Liquidity Adding ADV means, with respect to an ETP Holder, ''the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days and securities under one dollar) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred'' (*see* the Explanatory Endnotes to the Fee Schedule). Second, and only after the first threshold is met, an ETP Holder must achieve a Total ADV of at least 1 million shares. Total ADV means, with respect to an ETP Holder, ''the number of shares such ETP Holder has executed as a liquidity provider, liquidity taker and router of executed trades on average per trading day (excluding partial trading days and securities under one dollar) across all tapes on NSX for the calendar month (or partial month, as applicable) in which the executions occurred'' (*see* the Explanatory Endnotes to the Fee Schedule). If both the foregoing eligibility thresholds are achieved, an ETP Holder will be entitled to progressively higher rebates ($0.0022, $0.0023 and $0.0025) on its shares executed in AutoEx as liquidity adding Zero Display Orders depending on the Total ADV volumes achieved (at least 1 million but less than 15 million, at least 15 million but less than 30 million, and at least 30 million, respectively).

For purposes of clarity, if an ETP Holder fails to achieve Liquidity Adding ADV of at least 50,000 shares, or fails to achieve Total ADV of at least 1 million shares, in the same month (or partial month, as applicable), then no AutoEx Liquidity Adding Zero Display Order Rebate applies. In addition, for purposes of calculating an ETP Holder's Total ADV, all such ETP Holder's orders

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange has represented that it will submit a similar proposed rule change to adopt a corresponding rebate for displayed orders in Order Delivery Mode. The rebate on displayed orders will be the same as the rebate contained in this proposed rule change. Telephone conversation on March 12, 2009 between Richard Holley III, Senior Special Counsel, Division of Trading and Markets (''Division''), Commission; David Michehl, Special Counsel, Division, Commission; Sara Hawkins, Special Counsel, Division, Commission; James Yong, Chief Regulatory Officer, NSX; and Phil Pinc, Vice President and Counsel, NSX.

[4] As specified in Rule 11.11(c)(2)(A).

[5] The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

[6] The first tier is $0.0022 per share (applicable to shares executed in AutoEx which added liquidity as Zero Display Orders), where Total ADV is greater than or equal to 1 million and less than 15 million.

[7] The second tier is $0.0023 per share (applicable to shares executed in AutoEx which added liquidity as Zero Display Orders), where Total ADV is greater than or equal to 15 million and less than 30 million.

[8] The third tier is $0.0025 per share (applicable to shares executed in AutoEx which added liquidity as Zero Display Orders), where Total ADV is greater than or equal to 30 million.

executed at NSX or executed after routing through NSX in the given time frame are counted, regardless of whether such orders are displayed or undisplayed, executed in AutoEx or O/D, or are liquidity providing or taking. Finally, the AutoEx Liquidity Adding Zero Display Order Rebate applies only to those shares that are the subject of the ETP Holder's liquidity adding Zero Display Orders executed in AutoEx (*i.e.*, the rebate does not apply to all shares which constitute Total ADV, nor to non-Zero Display Order shares that add liquidity, nor to liquidity providing Zero Display Order shares in O/D). These details are set forth in an explanatory endnote to the Fee Schedule.

The measurement period for calculating the AutoEx Liquidity Adding Zero Display Order Rebate is generally the calendar month. However, and as further discussed below, in the event a pricing or rebate program utilizing this definition is implemented, modified or discontinued on other than month's end, the period of measurement used to determine ''average daily volume'' with respect to the rebate (as in the definition of Liquidity Adding ADV, Total ADV and elsewhere on the Fee Schedule) shall be that partial month during which the program's terms are in effect.

Examples of AutoEx Liquidity Adding Zero Display Order Rebate [9]

The following illustrates application of the AutoEx Liquidity Adding Zero Display Order Rebate. In a given calendar month (or other applicable period), the following ETP Holders achieve the following average daily volumes of executed shares (in each case, counting only securities priced at one dollar or higher and excluding partial trading days):

ETP Holder	1	2	3	4	5	6	7	8 (First Threshold in AutoEx)	9 (Second Threshold in AutoEx)
	AutoEx Displayed Liquidity Adding	AutoEx Zero Display Liquidity Adding	AutoEx Displayed Liquidity Taking	AutoEx Zero Display Liquidity Taking	O/D Displayed Liquidity Adding	O/D Zero Display Liquidity Adding	Routed Away	Liquidity Adding ADV (sum of columns 1, 2, 5 and 6)	Total ADV (sum of columns 1, 2, 3, 4, 5, 6 and 7)
A	30,000	30,000	30,000	30,000	30,000	30,000	30,000	120,000	210,000

ETP Holder A will not receive an AutoEx Liquidity Adding Zero Display Order Rebate. Although ETP Holder A has a Liquidity Adding ADV of 120,000 (column 8, which surpasses the Liquidity Adding ADV eligibility threshold of 50,000), ETP Holder A fails to satisfy the second eligibility requirement (ETP Holder A's Total ADV of 210,000 (column 9) falls short of the minimum Total ADV of at least 1 million necessary to obtain the first tier of the rebate).

ETP Holder	1	2	3	4	5	6	7	8 (First Threshold in AutoEx)	9 (Second Threshold in AutoEx)
	AutoEx Displayed Liquidity Adding	AutoEx Zero Display Liquidity Adding	AutoEx Displayed Liquidity Taking	AutoEx Zero Display Liquidity Taking	O/D Displayed Liquidity Adding	O/D Zero Display Liquidity Adding	Routed Away	Liquidity Adding ADV (sum of columns 1, 2, 5 and 6)	Total ADV (sum of columns 1, 2, 3, 4, 5, 6 and 7)
B	920,000	30,000	30,000	30,000	30,000	30,000	30,000	1,010,000	1,100,000

ETP Holder B will receive an AutoEx Liquidity Adding Zero Display Order Rebate. ETP Holder B has surpassed both the Liquidity Adding ADV eligibility threshold (with 1,010,000 shares) and the Total ADV eligibility threshold (with 1,100,000 shares). ETP Holder B's AutoEx Liquidity Adding Zero Display Order Rebate for the given period will equal the number of full trading days in the measurement period multiplied by 30,000 (column 2, the daily average number of shares which were executed in AutoEx as liquidity providing Zero Display Orders) multiplied by $0.0022 (the first rebate tier for which ETP Holder B is eligible based on Total ADV of at least 1 million and less than 15 million).

ETP Holder	1	2	3	4	5	6	7	8 (First Threshold in AutoEx)	9 (Second Threshold in AutoEx)
	AutoEx Displayed Liquidity Adding	AutoEx Zero Display Liquidity Adding	AutoEx Displayed Liquidity Taking	AutoEx Zero Display Liquidity Taking	O/D Displayed Liquidity Adding	O/D Zero Display Liquidity Adding	Routed Away	Liquidity Adding ADV (sum of columns 1, 2, 5 and 6)	Total ADV (sum of columns 1, 2, 3, 4, 5, 6 and 7)
C	30,000	920,000	30,000	30,000	30,000	30,000	30,000	1,010,000	1,100,000

[9] These examples are for illustrative purposes in respect of the calculation of the AutoEx Liquidity Adding Zero Display Order Rebate only, and do not take into account, nor illustrate, the rebates and/or fees applicable to displayed orders that add liquidity, orders that take liquidity, Zero Display Orders that add liquidity in O/D and orders routed away.

ETP Holder C will receive an AutoEx Liquidity Adding Zero Display Order Rebate. ETP Holder C has surpassed both the Liquidity Adding ADV eligibility threshold (with 1,010,000 shares) and the Total ADV eligibility threshold (with 1,100,000 shares). ETP Holder C's AutoEx Liquidity Adding Zero Display Order Rebate for the given period will equal the number of full trading days in the measurement period multiplied by 920,000 (column 2, the daily average number of shares which were executed in AutoEx as liquidity providing Zero Display Orders) multiplied by $0.0022 (the first rebate tier for which ETP Holder C is eligible based on Total ADV of at least 1 million and less than 15 million).

ETP Holder	1	2	3	4	5	6	7	8 (First Threshold in AutoEx)	9 (Second Threshold in AutoEx)
	AutoEx Displayed Liquidity Adding (million)	AutoEx Zero Display Liquidity Adding (million)	AutoEx Displayed Liquidity Taking	AutoEx Zero Display Liquidity Taking	O/D Displayed Liquidity Adding (million)	O/D Zero Display Liquidity Adding (million)	Routed Away	Liquidity Adding ADV (sum of columns 1, 2, 5 and 6) (million)	Total ADV (sum of columns 1, 2, 3, 4, 5, 6 and 7)
D	1	1	30,000	30,000	10	10	30,000	22	22,090,000

ETP Holder D *will* receive an AutoEx Liquidity Adding Zero Display Order Rebate. ETP Holder D has surpassed both the Liquidity Adding ADV eligibility threshold (with 22 million shares) and the Total ADV eligibility threshold (with 22,090,000 shares). ETP Holder D's AutoEx Liquidity Adding Zero Display Order Rebate for the given period will equal the number of full trading days in the measurement period multiplied by 1 million (column 2, the daily average number of shares which were executed in AutoEx as liquidity providing Zero Display Orders) multiplied by $0.0023 (the second rebate tier for which ETP Holder D is eligible based on Total ADV of at least 15 million and less than 30 million).

ETP Holder	1	2	3	4	5	6	7	8 (First threshold in AutoEx)	9 (Second threshold in AutoEx)
	AutoEx Displayed Liquidity Adding	AutoEx Zero Display Liquidity Adding (million)	AutoEx Displayed Liquidity Taking	AutoEx Zero Display Liquidity Taking	O/D Displayed Liquidity Adding	O/D Zero Display Liquidity Adding (million)	Routed Away	Liquidity Adding ADV (sum of columns 1, 2, 5 and 6) (million)	Total ADV (sum of columns 1, 2, 3, 4, 5, 6 and 7)
E	0	10	0	0	0	20	30,000	30	30,030,000

ETP Holder E will receive an AutoEx Liquidity Adding Zero Display Order Rebate. ETP Holder E has surpassed both the Liquidity Adding ADV eligibility threshold (with 30 million shares) and the Total ADV eligibility threshold (with 30,030,000 shares). ETP Holder E's AutoEx Liquidity Adding Zero Display Order Rebate for the given period will equal the number of full trading days in the measurement period multiplied by 10 million (column 2, the daily average number of shares which were executed in AutoEx as liquidity providing Zero Display Orders) multiplied by $0.0025 (the third rebate tier for which ETP Holder E is eligible based on Total ADV of at least 30 million).

Order Delivery Liquidity Adding Zero Display Order Rebate

For securities trading at one dollar or higher in O/D mode, this rule change also proposes to provide a progressively higher rebate applicable to shares executed as liquidity providing Zero Display Orders in O/D. ETP Holders who achieve an average daily volume of shares executed as Zero Display Orders in O/D (''Liquidity Adding ADV (O/D Dark)'') of 1 million,[10] 10 million [11] and 20 million [12] shares will receive rebates of $0.0008, $0.0010 and $0.0012, respectively, with respect to such shares (any such rebate hereinafter referred to as an ''O/D Liquidity Adding Zero Display Order Rebate''). Liquidity Adding ADV (O/D Dark) means, with respect to an ETP Holder, ''the number of Zero Display Order shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days and securities under one dollar) across all tapes in O/D mode for the calendar month (or partial month, as applicable) in which the executions occurred'' (*see* the Explanatory Endnotes to the Fee Schedule).

For purposes of clarity, if an ETP Holder fails to achieve Liquidity Adding ADV (O/D Dark) of at least 1 million shares in a given month (or partial month, as applicable), then no O/D Liquidity Adding Zero Display Order Rebate applies. In addition, for purposes of calculating an ETP Holder's Liquidity Adding ADV (O/D Dark), only such ETP Holder's liquidity adding Zero Display Orders executed in O/D in the given time frame are counted. Finally, the O/D Liquidity Adding Zero Display Order Rebate applies only to those shares of an ETP Holder executed in O/D as liquidity adding Zero Display Orders (*i.e.*, the rebate does not apply to shares of non-Zero Display (*i.e.*, displayed) Orders that add liquidity in O/D, nor to shares of liquidity providing Zero Display Orders in AutoEx). These

[10] The first tier is $0.0008 per share, applicable to shares executed in O/D which added liquidity as Zero Display Orders, where the number of such shares is greater than or equal to 1 million and less than 10 million.

[11] The second tier is $0.0010 per share, applicable to shares executed in O/D which added liquidity as Zero Display Orders, where the number of such shares is greater than or equal to 10 million and less than 20 million.

[12] The third tier is $0.0012 per share, applicable to shares executed in O/D which added liquidity as Zero Display Orders, where the number of such shares is greater than or equal to 20 million.

details are set forth in an explanatory endnote to the Fee Schedule.

Like other calculations of ''average daily volume'' in the Fee Schedule, the measurement period for calculating the O/D Liquidity Adding Zero Display Order Rebate is generally the calendar month. However, and as further discussed below, in the event a pricing or rebate program utilizing this definition is implemented, modified or discontinued on other than month's end, the period of measurement used to determine ''average daily volume'' with respect to the rebate (as used in the definition of Liquidity Adding ADV (O/D Dark) and elsewhere on the Fee Schedule) shall be that partial month during which the program's terms are in effect.

Examples of Order Delivery Liquidity Adding Zero Display Order Rebate [13]

The [14] following charts (which are the same charts as set forth above with respect to illustrations of the AutoEx Liquidity Adding Zero Display Order Rebate) may be used to illustrate application of the O/D Liquidity Adding Zero Display Order Rebate. In a given calendar month (or other applicable period), the following ETP Holders achieve the following average daily volumes of executed shares (in each case, counting only securities priced at one dollar or higher and excluding partial trading days):

ETP Holder	1 AutoEx Displayed Liquidity Adding	2 AutoEx Zero Display Liquidity Adding	3 AutoEx Displayed Liquidity Taking	4 AutoEx Zero Display Liquidity Taking	5 O/D Displayed Liquidity Adding	6 (Threshold in O/D) Liquidity Adding ADV (O/D Dark) [14]	7 Routed Away	8 Liquidity Adding ADV (sum of columns 1, 2, 5 and 6)	9 Total ADV (sum of columns 1, 2, 3, 4, 5, 6 and 7)
A	30,000	30,000	30,000	30,000	30,000	30,000	30,000	120,000	210,000
B	920,000	30,000	30,000	30,000	30,000	30,000	30,000	1,010,000	1,100,000
C	30,000	920,000	30,000	30,000	30,000	30,000	30,000	1,010,000	1,100,000

ETP Holder A will not receive an O/D Liquidity Adding Zero Display Order Rebate. ETP Holder A fails to satisfy the eligibility requirement (ETP Holder A's Liquidity Adding ADV (O/D Dark) of 30,000 (column 6) falls short of the first rebate tier of at least 1 million). ETP Holder B and ETP Holder C similarly fail to achieve the first tier of the O/D Liquidity Adding Zero Display Order Rebate.

ETP Holder	1 AutoEx Displayed Liquidity Adding (million)	2 AutoEx Zero Display Liquidity Adding (million)	3 AutoEx Displayed Liquidity Taking	4 AutoEx Zero Display Liquidity Taking	5 O/D Displayed Liquidity Adding (million)	6 (Threshold in O/D) Liquidity Adding ADV (O/D Dark) (million)	7 Routed Away	8 Liquidity Adding ADV (sum of columns 1, 2, 5 and 6) (million)	9 Total ADV (sum of columns 1, 2, 3, 4, 5, 6 and 7)
D	1	1	30,000	30,000	10	10	30,000	22	22,090,000

ETP Holder D will receive an O/D Liquidity Adding Zero Display Order Rebate. ETP Holder D's Liquidity Adding ADV (O/D Dark) of 10 million meets the second tier of the rebate. Accordingly, ETP Holder D's O/D Liquidity Adding Zero Display Order Rebate for the given period will equal the number of full trading days in the measurement period multiplied by 10 million multiplied by $0.0010 (the second rebate tier for which ETP Holder D is eligible based on Liquidity Adding ADV (O/D Dark) of at least 10 million and less than 20 million).

ETP Holder	1 AutoEx Displayed Liquidity Adding	2 AutoEx Zero Display Liquidity Adding (million)	3 AutoEx Displayed Liquidity Taking	4 AutoEx Zero Display Liquidity Taking	5 O/D Displayed Liquidity Adding	6 (Threshold in O/D) Liquidity Adding ADV (O/D Dark) (million)	7 Routed Away	8 Liquidity Adding ADV (sum of columns 1, 2, 5 and 6) (million)	9 Total ADV (sum of columns 1, 2, 3, 4, 5, 6 and 7)
E	0	10	0	0	0	20	30,000	30	30,030,000

ETP Holder E will receive an O/D Liquidity Adding Zero Display Order Rebate. ETP Holder E has achieved the third tier of the Liquidity Adding ADV (O/D Dark) eligibility threshold (with 20 million shares). Accordingly, ETP Holder E's O/D Liquidity Adding Zero Display Order Rebate for the given period will equal the number of full

[13] As in the examples of the AutoEx Liquidity Adding Zero Display Order Rebate, these examples merely illustrate the calculation of the rebates for Zero Display Orders that Add Liquidity in Order Delivery. They do not calculate, nor show, the rebates and fees applicable to displayed orders that add liquidity, Zero Display Orders that add liquidity in AutoEx, orders that take liquidity, or fees for routing.

[14] This column is the same as column 6 in the previous chart of examples of the AutoEx Liquidity Adding Zero Display Order Rebate which bore the header ''O/D Zero Display Liquidity Adding''.

trading days in the measurement period multiplied by 20 million multiplied by $0.0012.

Definition of ''Liquidity Adding ADV'' Modified To Allow for Partial Calendar Months

The current rule filing also proposes to modify the definition of ''Liquidity Adding ADV'' to provide additional clarity if the Exchange makes modifications to its fee and rebate program effective on other than month end. Prior to the proposed rule change, ''Liquidity Adding ADV'' is defined as, with respect to an ETP Holder, ''the number of shares such ETP Holder has executed as a liquidity provider on average per trading day (excluding partial trading days and securities under one dollar) across all tapes on NSX for the calendar month in which the executions occurred'' (*see* Explanatory Endnotes to the Fee Schedule). For business reasons from time to time the Exchange may determine to modify or discontinue its Fee Schedule on other than month end. The proposed rule change is intended to clarify the Exchange's ability to respond to changing business necessities through modification of its pricing model without implementing changes to the Fee Schedule that relate to Liquidity Adding ADV only on month's end.[15] Accordingly, in order to clarify how ''Liquidity Adding ADV'' is determined for any period, the proposed rule change adds the parenthetical clause ''(or partial month, as applicable)'' after the words ''for the calendar month'' in the definition of Liquidity Adding ADV, and also adds an additional explanatory endnote to the Fee Schedule which addresses partial month calculations (*see* Explanatory Endnotes to the Fee Schedule). These changes clarify that the Exchange will calculate Liquidity Adding ADV on less than a calendar month basis if necessary due to modification or discontinuation of one or more features utilizing that definition in the Fee Schedule. This exception is likewise included in the proposed definition of other ''average daily volume'' calculations in the proposed Fee Schedule, namely in the definitions of ''Total ADV'' and Liquidity Adding ADV (O/D Dark)''.

Rationale

The Exchange has determined that these changes are necessary to increase the volume of Zero Display Order in order to increase the revenue of the Exchange and to adequately fund its regulatory and general business functions. In addition, the modification to the definition of Liquidity Adding ADV is necessary to enhance the Exchange's flexibility to commence, modify and discontinue fee pricing programs utilizing that definition on dates other than calendar month end. The proposed modifications are reasonable and equitably allocated to those ETP Holders that opt to provide and take liquidity in displayed orders and Zero Display Orders, and is not discriminatory because ETP Holders are free to elect whether or not to send displayed orders or Zero Display Orders via O/D Mode or AutoEx, and as a liquidity provider or liquidity taker. ETP Holders are further free to elect what volumes to send to the Exchange during the course of a calculation measurement period. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange intends to make the proposed credit and rebate structure effective on filing of this proposed rule for trading on March 2, 2009. Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[16] in general, and Section 6(b)(4) of the Act,[17] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Moreover, the proposed fee and rebate structure is not discriminatory in that all ETP Holders are eligible to submit (or not submit) liquidity adding trades and quotes in O/D Mode or AutoEx in all tapes and as either displayed or undisplayed, and may do so at their discretion in the daily volumes they choose during the course of the measurement period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[18] and subparagraph (f)(2) of Rule 19b–4[19] thereunder, because, as provided in (f)(2), it changes ''a due, fee or other charge applicable only to a member'' (known on the Exchange as an ETP Holder). At any time within sixty (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.

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–NSX–2009–01 on the subject line.

[15] A mid-month modification to the Fee Schedule could have either a negative or a positive impact on an ETP Holder based on fluctuations in the volume of its order flow to the Exchange over the course of a calendar month. A mid-month modification or discontinuation may potentially negatively impact an ETP Holder, if any, whose volume tends to increase during the course of the calendar month such that, but for the discontinuation or modification of the Fee Schedule mid-month, the ETP Holder would have achieved cheaper liquidity taking fees based on achievement of the Liquidity Adding ADV threshold of 50,000 shares. Conversely, a mid-month modification or discontinuation may potentially positively impact an ETP Holder, if any, whose volume tends to decrease during the course of the calendar month such that, but for the discontinuation or modification of the Fee Schedule mid-month, the ETP Holder would not have achieved cheaper liquidity taking fees based on achievement of the Liquidity Adding ADV threshold of 50,000 shares.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 C.F.R. 240.19b–4(f)(2).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2009–01. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NSX–2009–01 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8010–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59581; File No. SR–NYSE–2009–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending Until June 9, 2009, the Operation of Interim NYSE Rule 128 Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions if They Arise Out of the Use or Operation of Any Quotation, Execution or Communication System Owned or Operated by the Exchange, Including Those Executions That Occur in the Event of a System Disruption or System Malfunction

March 16, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 9, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until June 9, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend until June 9, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,[4] the NYSE did not have a rule providing the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE.

In order for the NYSE to be consistent with other national securities exchanges which have some version of a clearly erroneous execution rule, the Exchange is drafting an amended clearly erroneous rule which will accommodate such other exchanges but will be appropriate for the NYSE market model.

The NYSE notes that the Commission approved an amended clearly erroneous execution rule for Nasdaq in May 2008.[5] On July 28, 2008, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until October 1, 2008[6] in order to review the provisions of Nasdaq's clearly erroneous rule and to consider integrating similar standards into its own amendment to Rule 128. On October 1, 2008,[7] the Exchange filed with the SEC a further request to extend the operation of interim Rule 128 until January 9, 2009 in order to consider integrating similar standards into the amendment to Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR–NYSE–2008–09).

[5] *See* Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (SR–NASDAQ–2007–001).

[6] *See* Securities Exchange Act Release No. 58328 (August 8, 2008), 73 FR 47247 (August 13, 2008) (SR–NYSE–2008–63).

[7] *See* Securities Exchange Act Release No. 58732 (October 3, 2008), 73 FR 61183 (October 15, 2008) (SR–NYSE–2008–99).

128. On January 9, 2009,[8] the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until March 9, 2009, indicating that the Exchange was still in the process of reviewing the Nasdaq rule with a view towards incorporating certain provisions into the amendment of interim Rule 128.

On February 10, 2009, NYSE Arca submitted a proposal to the Commission to amend its clearly erroneous rule. The NYSE Arca proposed rule differs in certain respects from the Nasdaq clearly erroneous rule. Accordingly, the Exchange is presently in the process of finalizing its review of NYSE Arca's proposed amended CEE [sic] rule, which includes market wide CEE [sic] initiatives, to determine if it is appropriate to incorporate such provisions into the Rule 128 amendment. The Exchange is, therefore, requesting to extend the operation of interim Rule 128 until June 9, 2009. Prior to June 9, 2009, the Exchange intends to file a 19b–4 rule change amending interim Rule 128, which, if approved by the SEC, will be effective after June 9, 2009.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') [9] for this proposed rule change is the requirement under Section 6(b)(5)[10] that an Exchange have rules that are 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.

As articulated more fully above, the proposed rule would place the NYSE on equal footing with other national securities exchanges. This will promote the integrity of the market and protect the public interest, since it would permit all exchanges to cancel or adjust clearly erroneous trades when such trades occur, rather than canceling them on all other markets, but leaving them standing on only one market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [11] of the Act and Rule 19b–4(f)(6) [12] thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange believes that good cause, consistent with the provisions of Rule 19b–4(f)(6), exists to justify making the rule change immediately effective. Because the proposed rule is based on a rule that has been previously approved by the Commission, and because the proposed rule would in any event be operative only until a more robust and market-appropriate rule was implemented, the NYSE believes that the proposed rule is non-controversial. Moreover, the NYSE believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest, and that this exigency justifies filing the rule for immediate effectiveness rather than using the regular Rule 19b–2 process, which would require the Exchange to continue without the protection of the proposed rule until the expiration of the prescribed time periods for notice, comment and approval. In contrast, immediate effectiveness of the proposed rule will immediately and timely enable the NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The proposed rule will also allow the Exchange to protect customers and the public interest, and to continue to provide economically efficient execution of securities transactions.

The NYSE also requests that the Commission waive the five-day period for notice of intent to file this proposed rule change, and the 30-day period before the rule becomes operative, both of which are prescribed by Rule 19b–4(f)(6), but which may be waived pursuant to Rule 19b–4(f)(6)(iii) [13] if such action is consistent with the protection of investors and public interest.[14] The Exchange believes that waiver of these time periods so that the rule may be immediately operative are consistent with the protection of investors and the public interest for the reasons described above.

The Commission believes that waiving the 30-day operative delay will allow the Exchange to continue to immediately and timely cancel or adjust trades that it determines to be clearly erroneous under Rule 128. The Commission believes that the extension of NYSE Rule 128 until June 9, 2009 will allow the Exchange to continue to apply the rule without interruption and is consistent with the protection of investors and the public interest. The Commission hereby designates the proposal as operative upon filing.[15] The Commission has determined to waive the five-day prefiling period in this case.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[8] *See* Securities Exchange Act Release No. 59255 (January 15, 2009), 74 FR 4496 (January 26, 2009) (SR–NYSE–2009–02).

[9] 15 U.S.C. 78f(a). [sic]

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] In fact, the Commission notes, under Rule 19b–4(f)(6)(iii), the ''consistent with the protection of investors and public interest'' standard applies only to the Commission's waiver of the 30-day operative delay. Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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–NYSE–2009–26 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–26. 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 NYSE. 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–NYSE–2009–26 and should be submitted on or before April 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–6397 Filed 3–23–09; 8:45 am]

BILLING CODE 8010–01–P

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0247]

Solutions Capital I, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Solutions Capital I, L.P., 1100 Wilson Blvd., Suite 3000, Arlington, VA 22209, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Solutions Capital I, L.P., proposes to provide equity/debt security financing to Total Sleep Holdings, Inc., 1425 Greenway Drive, Suite 300, Irving, TX 75038. The financing is contemplated for the pay down of an existing senior lender and for working capital.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because MCG Capital Corporation, an Associate of Solutions Capital I, L.P., owns more than ten percent of Total Sleep Holdings, Inc.; therefore Total Sleep Holdings, Inc. is considered an Associate of Solutions Capital I, L.P., as defined in Sec. 105.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: March 15, 2009.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. E9–6379 Filed 3–23–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11677 and #11678]

Oregon Disaster Number OR–00029

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oregon (FEMA–1824–DR), dated 03/02/2009.

Incident: Severe winter storm, record and near record snow, landslides, and mudslides.

Incident Period: 12/20/2008 through 12/26/2008.

Effective Date: 03/13/2009.

Physical Loan Application Deadline Date: 05/01/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 12/02/2009.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oregon, dated 03/02/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Washington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. E9–6390 Filed 3–23–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6556]

60-Day Notice of Proposed Information Collection: DS–4096, Reconstruction and Stabilization; Civilian Response Corps Database In-Processing Form, OMB Control Number 1405–0168

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Civilian Response Corps Database In-Processing Form.

• *OMB Control Number:* 1405–0168.

• *Type of Request:* Revised Collection.

• *Originating Office:* Office of the Coordinator for Reconstruction & Stabilization, S/CRS.

• *Form Numbers:* DS–4096.

• *Respondents:* Individuals who are members of or apply for one or more of the three components of the Civilian Response Corps (Active, Standby and Reserves).

• *Estimated Number of Respondents:* 2000 per year.

• *Estimated Number of Responses:* 2000 per year.

• *Average Hours Per Response:* 1 hour.

• *Total Estimated Burden:* 2000 Hours.

• *Frequency:* On occasion.

• *Obligation to Respond:* Necessary to receive benefits, to be deployable and a condition for continued employment in the CRC.

DATE(S): The Department will accept comments from the public up to 60 days from March 24, 2009.

Addresses for Comments and Further Information: You may submit comments and request for further information by either of the following methods:

• *E-mail: crccomments@state.gov.*

• *Mail (paper, disk, or CD–ROM submissions):* CRC Comments, Suite 1150, 1900 North Kent Street, Rosslyn, VA 22202.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

The information collected is an important part of the Department's responsibility to coordinate U.S. Government planning; institutionalize U.S. Reconstruction and Stabilization (R&S) capacity; and help stabilize and reconstruct societies in transition from conflict or civil strife so they can reach a sustainable path toward peace, democracy, and a market economy. The information gathered will be used to identify Civilian Response Corps members who are available to participate in CRC missions.

Methodology:

Presently respondents will complete a paper version of the DS–4096. Current planning is underway so that within two years respondents will be able to complete and submit the form electronically via the Web site (*http://www.crs.state.gov*).

Dated: March 18, 2009.

Jonathan Benton,

Acting Deputy Coordinator and Director of Civilian Response Operations, Office of the Coordinator for Reconstruction & Stabilization, Department of State.

[FR Doc. E9–6439 Filed 3–23–09; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 6558]

In the Matter of the Review of the Designations of United Self-Defense Forces of Colombia and Liberation Tigers of Tamil Eelam, as Foreign Terrorist Organizations pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Records assembled in this matter pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2003 re-designations of the aforementioned organizations as foreign terrorist organizations have not changed in such a manner as to warrant revocation of the designations and that the national security of the United States does not warrant a revocation.

Therefore, I hereby determine that the designations of the aforementioned organizations as foreign terrorist organizations, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: March 16, 2009.

James B Steinberg,

Deputy Secretary of State, Department of State.

[FR Doc. E9–6425 Filed 3–23–09; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 6557]

Notice of Meeting

Title: Defense Trade Advisory Group; Notice of Meeting April 7, 2009.

SUMMARY: The Defense Trade Advisory Group (DTAG) will meet on April 7, 2009 from 9:30 a.m. to 1 p.m. in the Loy Henderson Conference Room at the U.S. Department of State, Harry S. Truman Building, Washington, DC. The meeting will be open to the public. Entry and registration will begin at 8:45 a.m. Please use the building entrance located at 23rd Street, NW., Washington, DC between C & D Streets. The purpose of the meeting will be to discuss current defense trade issues and topics for further study.

As access to the Department of State facilities is controlled, persons wishing to attend the meeting must notify the DTAG contact person by COB Tuesday, March 31, 2009. If notified after this date, the DTAG Secretariat cannot guarantee that the Department's Bureau of Diplomatic Security can complete the necessary processing required to attend the April 7 plenary. Each non-member observer or DTAG member needing building access that wishes to attend this plenary session should provide: his/her name; company or organizational affiliation; phone number; date of birth; and identifying data such as driver's license number, U.S. Government ID, or U.S. Military ID, to the DTAG contact person, Allie Frantz, via e-mail at *FrantzA@state.gov*. DTAG members planning to attend the plenary session should notify the DTAG contact person, Allie Frantz, at the e-mail provided above. A RSVP list will be provided to Diplomatic Security and the Reception Desk at the 23rd Street Entrance. One of the following forms of valid photo identification will be required for admission to the Department of State building: U.S. driver's license, U.S. passport, U.S. Government ID or other valid photo ID.

DATES: The DTAG meeting will be held on April 7, 2009 from 9:30 a.m. to 1 p.m. and is open to the public.

ADDRESSES: The meeting will be held in the Loy Henderson Conference Room at the U.S. Department of State, Harry S. Truman Building, Washington DC DTAG members and non-member observers are required to pre-register due to security reasons.

FOR FURTHER INFORMATION CONTACT: Members of the public who need additional information regarding these meetings or the DTAG should contact the DTAG contact person, Allie Frantz,

PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 736–9220; FAX (202) 261–8199; or e-mail *FrantzA@state.gov.*

SUPPLEMENTARY INFORMATION:

(a) Background

The membership of this advisory committee consists of private sector defense trade representatives who advise the Department on policies, regulations, and technical issues affecting defense trade. Individuals interested in defense trade issues are invited to attend and will be able to participate in the discussion in accordance with the Chair's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

April 7, 2009 9:30 a.m. to 1 p.m. Meeting—Topics for discussion and assigned time frames are as follows: 9:30–9:45 Call to order by DTAG Chairman. 9:45–10:15 Opening Remarks from Department of State Official(s). 10:15–11:45 DTAG Working Group on the ITAR Definitions presentation. 11:45–12 Break. 12–12:45 Discussion of new administration priorities. 12:45–1 Closing Remarks.

(b) Procedures for Providing Public Comments

The DTAG will accept written public comments as well as oral public comments. Comments should be relevant to the topics for discussion. Public participation at the open meeting will be based on recognition by the chair and may not exceed 5 minutes per speaker. Written comments should be sent to the DTAG Executive Secretariat contact person no later than March 31, 2009 so that the comments may be made available to the DTAG members for consideration.

Written comments should be supplied to the DTAG Executive Secretariat contact person at the mailing address or e-mail provided above, in Adobe Acrobat or Word format.

Note: The DTAG operates under the provisions of the Federal Advisory Committee Act, as amended, and all public comments will be made available for public inspection, and might be posted on DDTC's Web site.

(c) Meeting Accommodations

Individuals requiring special accommodation to access the open meeting referenced above should contact Ms. Frantz at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 17, 2009.

Robert S. Kovac,

Designated Federal Official, Defense Trade Advisory Group, Department of State.

[FR Doc. E9–6423 Filed 3–23–09; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourteenth Meeting: RTCA Special Committee 203/Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

DATES: The meeting will be held April 28–30, 2009 from 9–5 p.m..

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036. Point of Contact: RTCA Secretariat, PoC: Rudy Ruana, Telephone: 202–833–9339, E-mail: *rruana@rtca.org.*

Note: Dress is Business Casual.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 203 meeting. The agenda will include:

April 28

- Opening Plenary Session (Introductory Remarks and Introductions)
- Approval of Thirteenth Plenary Summary
- Plenary Presentations:
- Leadership Updates
- Work Plan Status
- Overview of Product Team Breakout Sessions
- Plenary Adjourns
- Requirements Product Team Status Review

April 29

- Product Team Breakout Sessions
- Requirements/Architecture Product Team
- Operational Services and Environmental Definition (OSED) Product Team
- Control & Communications (C&C) Product Team
- Sense & Avoid (S&A) Product Team

April 30

- Product Team Breakout Sessions
- Requirements/Architecture Product Team
- OSED Product Team
- C&C Product Team
- S&A Product Team
- Plenary Reconvenes
- Product Team Back Briefs
- Closing Plenary Session (Other Business, Date, Place, and Time for Plenary, Adjourns)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 17, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–6456 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Meeting—RTCA Special Committee 217/EUROCAE WG 44—Airport Mapping Databases

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 217 meeting: Airport Mapping Databases.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 217 meeting: Airport Mapping Databases

DATES: The meeting will be held on May 18–20, 2009, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at AENA, Spanish Air Navigation Service Provide, Juan Ignacio Luca de Tena 14, Madrid, Spain, Contact: Javier Fenoll, Tel : (34) 91 321 54 61, Fax : (34) 91 321 31 57, Internet: *jfenoll@e-externas.aena.es.*

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW.,

Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 217 meeting. The agenda will include:

18 May

Opening Plenary (Chairmen's remarks and introductions, Review and approve meeting agenda)

Discussion

- Schedule for this week
- Schedule for next meetings
- Action Items

Presentations

- Taxi Graphic Demonstrations—Brian Gilbert
- AENA Activities on eTOD—Javier Fenoll

Terrain, Obstacle, and Airport Mapping discussions

- Discussion on AMDB and ICAO Recommendations

19 May

Terrain, Obstacle, and Airport Mapping discussions

Address Outcome from ''Roadmap Items'' (outcome from assigned actions)

20 May

Terrain, Obstacle, and Airport Mapping discussions

Plenary Session

- Other Business
- Determine and agree on action plan
- Meeting Plans and Dates.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 18, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–6459 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 147 Sixty Ninth Plenary: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 147 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment.

DATES: The meeting will be held April 21, 2009 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 147 meeting and Working Group 75. The agenda will include:

- Opening Plenary Session
  - WG–75 Chairman's opening remarks
  - SC–147 Co-Chairmen's opening remarks
  - Introductions
  - Approval of Agenda
  - Approval of Minutes from 68th meeting of SC147
- Final review and discussion of FRAC comments and consideration/final approval of Change 1 to DO–300 (Hybrid Surveillance MOPS)
- Final review and discussion of FRAC comments and consideration/final approval of Change 1 to DO–185B (TCAS II MOPS)
  - EUROCAE WG–75: Status of current activities
  - TCAS Program Office: TCAS Monitoring efforts
  - SC–218 Current status and planned deliverables
  - AVS status on TSO–C119c publication
  - Certification Authorities (USA and European) plans for Change 7.1 equipage
  - Closing Session (Other/new business.)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 18, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–6467 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0030]

Agency Information Collection Activities; Revision and Renewal of a Currently-Approved Information Collection: Annual and Quarterly Report of Class I Motor Carriers of Passengers (OMB Control Number 2126–0031)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit to the Office of Management and Budget (OMB) its request to revise a currently-approved information collection for Class I Motor Carriers of Passengers (Form MP–1) entitled, *''Annual and Quarterly Reports.''* This information collection is necessary to ensure that motor carriers comply with financial and operating statistics requirements at chapter III of title 49 CFR part 369 entitled, *''Reports of Motor Carriers.''* The agency invites public comments on this information request.

DATES: We must receive your comments on or before May 26, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket Number FMCSA–2009–0030 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC, 20590–0001 between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting them on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** on April 11, 2000 (65 FR 19476). This information is also available at *http://docketsinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Vivian Oliver, Office of Research and Information Technology, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–2974; e-mail *Vivian.Oliver@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: For-hire Class I motor carriers of passengers (including interstate and intrastate) [1] are required to file Motor Carrier Annual and Quarterly Reports (Form MP–1) that provide financial and operating data (see 49 U.S.C. 14123; and implementing FMCSA regulations at 49 CFR part 369). The agency uses this information to assess the health of the industry and identify industry changes that may affect national transportation policy. The data also show company financial stability and traffic patterns. Motor carriers of passengers required to comply with the regulations are classified on the basis of their annual gross carrier operating revenues. Under the F&OS program the FMCSA collects balance sheet and income statement data along with information on tonnage, mileage, employees, transportation equipment, and other related data.

The data and information collected is made publicly available as prescribed in 49 CFR part 369. Class I and Class II motor carriers are required by 49 U.S.C. 14123 to file annual and quarterly financial reports with the Secretary. The Secretary has exercised his discretion under section 14123 to also require Class I property carriers (including dual-property carriers), Class I household goods carriers and Class I passengers carriers to file quarterly reports.

Over the years, the regulations were formerly administered by the Interstate Commerce Commission (ICC), but the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803 (Dec. 29, 1995); now codified at 49 U.S.C. 14123) abolished the ICC and transferred the responsibility for collecting and disseminating motor carrier financial information to the Secretary of Transportation (Secretary). On September 30, 1998, the Secretary delegated and transferred the authority to administer the F&OS program to the former Bureau of Transportation Statistics (BTS), now a part of the Research and Innovative Technology Administration (RITA), to former Chapter XI, subchapter 13 of 49 CFR part 1420 (63 FR 52192).

On September 29, 2004, the Secretary transferred the responsibility for the F&OS program from BTS to FMCSA in the belief that the program was more aligned with FMCSA's safety mission and its other motor carrier responsibilities (69 FR 51009). On August 10, 2006 (71 FR 45740), the Secretary published a final rule that transferred and redesignated the motor carrier financial and statistical reporting regulations of BTS that were formerly located at chapter XI of title 49 CFR to FMCSA in 49 chapter III of title 49 CFR part 369.

Title: Annual and Quarterly Report of Class I Motor Carriers of Passengers (formerly OMB Control Number 2139–0003).

New OMB Control Number: 2126–0031.

Type of Request: Revision and renewal of a currently-approved information collection request.

Respondents: Class I Motor Carriers of Passengers.

Estimated Number of Respondents: 6.

Estimated Time per Response: 18 minutes per response.

Expiration Date: September 30, 2009.

Frequency of Response: Annually and quarterly.

Estimated Total Annual Burden: 9 hours [30 responses × 18 minutes per response/60 minutes = 9].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its mission; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued on: March 16, 2009.

Terry Shelton,

Associate Administrator for Research and Information Technology.

[FR Doc. E9–6458 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0081]

Notice of Fiscal Year 2010 Safety Grants and Solicitation for Applications

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This notice is to inform the public of the Federal Motor Carrier Safety Administration's (FMCSA) Fiscal

[1] For purposes of the Financial & Operating Statistics (F&OS) program, passenger carriers are classified into the following two groups; (1) Class I carriers are those having average annual gross transportation operating revenues (including interstate and intrastate) of $5 million or more from passenger motor carrier operations after applying the revenue deflator formula as shown in the Note at 49 CFR 369.3; and (2) Class II passenger carriers are those having average annual gross transportation operating revenues (including interstate and intrastate) of less than $5 million from passenger motor carrier operations after applying the revenue deflator formula as shown in the Note at 49 CFR 369.3. Only Class I carriers of passengers are required to file the Annual and Quarterly Report Form MP–1. Class II passenger carriers, however, must notify the agency when there is a change in their classification or their revenues exceed the Class II limit.

Year (FY) 2010 safety grant opportunities and to request public comments regarding changes to its application and award processes for grant programs. The Agency is making procedural changes in an effort to simplify and streamline its grants application and award processes. In addition, FMCSA invites comments on the proposed application deadlines for its FY 2010 (October 1, 2009 through September 30, 2010) safety grants programs. The 11 safety programs include the Motor Carrier Safety Assistance Program (MCSAP) Basic grants; MCSAP Incentive grants; MCSAP New Entrant Safety Audit grants; MCSAP High Priority grants; Commercial Motor Vehicle (CMV) Operator Safety Training grants; Border Enforcement grants (BEG); Commercial Driver's License Program Improvement (CDLPI) grants; Commercial Driver's License Information System (CDLIS) Modernization grants; Performance and Registration Information Systems Management (PRISM) grants; Safety Data Improvement Program grants (SaDIP); and the Commercial Vehicle Information Systems and Networks (CVISN) grants. Each grant program was provided for in the Agency's most recent authorization, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The purpose of this notice is to provide grantees with information well in advance of the Agency's proposed FY 2010 safety grant application deadlines and to request comments on the deadlines and other changes in the Agency's safety grant programs.

DATES: Comments on the proposed application deadlines and other changes should be submitted by April 23, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0081, using any of the following methods.

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

- *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 or Courier:* West Building Grand Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in the comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments On-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.) You may review the DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://DocketInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Please contact the following FMCSA staff with questions or needed information on the Agency's grant programs:

New Entrant Safety Audits Grants—Arthur Williams, *arthur.williams@dot.gov,* 202–366–3695.

Border Enforcement Grants—Carla Vagnini, *carla.vagnini@dot.gov,* 202–366–3771.

MCSAP High Priority Grants—Cim Weiss, *cim.weiss@dot.gov,* 202–366–0275.

CMV Operator Safety Training Grants—Julie Otto, *julie.otto@dot.gov,* 202–366–0710.

CDLPI Grants—Brandon Poarch, *brandon.poarch@dot.gov,* 202–366–3030.

CDLIS Modernization Grants—Brandon Poarch, *brandon.poarch@dot.gov,* 202–366–3030.

SaDIP Grants—Betsy Benkowski, *betsy.benkowski@dot.gov,* 202–366–4808.

PRISM Grants—Tom Lawler, *tom.lawler@dot.gov,* 202–366–3866.

CVISN Grants—Julie Lane, *julie.lane@dot.gov,* 202–385–2391.

All staff may be reached at FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: FMCSA recognizes that State governments and other grantees are dependent on its safety grants to develop and maintain important commercial motor vehicle (CMV) safety programs. FMCSA further acknowledges that delays in awarding grant funds may have an adverse impact on these important safety programs. As a result, FMCSA has been conducting a grants process review, in an effort to identify ways to streamline the application, award, and grants management processes, and to award grant funds earlier each fiscal year. In addition, FMCSA is making changes in the grants application, award and oversight processes to standardize application forms, increase the use of electronic documents, standardize quarterly reports and reduce the number of needed grant amendments.

First, FMCSA is considering the establishment of standardized due dates for its grant programs. In the **DATES** section above, we indicate the proposed schedule for the FY 2010 grant applications. These dates would then become the standing application due dates for these programs.

Second, consistent with its contract authority, FMCSA plans to enter into grant agreements beginning October 1 or as soon thereafter as administratively practicable. FMCSA intends to enter into grant agreements no later than 90 days from the date the application is due. We request comments from the States and other grant applicants on the impacts of the proposed schedule.

Third, FMCSA is considering a standard grant application form and must implement a new quarterly reporting process. FMCSA is reviewing the Standard Form 424 (''Application for Federal Assistance'') and its attachments for use throughout all of its grant programs. While each grant program may request different data in some of the data fields on the form, the use of the Standard Form 424 would be mandatory. FMCSA must adopt the Standard Form—Project Progress Report (SF–PPR) as its preferred form for quarterly reporting. FMCSA requests comment from grantees on the impacts of these changes. Again, each grant program may, in certain instances, request different data be submitted in some of the fields or boxes on the form but SF–PRR would be mandatory for quarterly reporting.

Fourth, FMCSA is increasing the use of electronic documents. As a result, the

number of original copies of grant agreements required to be submitted to FMCSA will be reduced from three copies to two. In addition, FMCSA will provide most grant agreement documents electronically to its financial processing office. Grantees would, however, be required to submit the Automated Clearing House (ACH) Vendor Payment Form (SF–3881) directly to FMCSA's financial processing office by U.S. Postal Service, courier service or secure fax. We request information on any impacts of these proposed changes.

Lastly, FMCSA requests comments and suggestions from grantees concerning improvement of the application, award and grants management processes. Additional information is provided below for each individual grant program.

MCSAP Basic and Incentive Grants:

Sections 4101 and 4107 of SAFETEA–LU authorize and fund FMCSA's Motor Carrier Safety Grants for FY 2005 through FY 2009. MCSAP Basic and Incentive grants are governed by 49 U.S.C. 31102–31104 and 49 CFR Part 350. Under the Basic and Incentive grants programs, a State lead MCSAP agency, as designated by its Governor, is eligible to apply for Basic and Incentive grant funding by submitting a commercial vehicle safety plan (CVSP). See 49 CFR 350.201 and 205. Pursuant to 49 CFR 350.303, FMCSA will reimburse each lead State MCSAP agency 80 percent of eligible costs incurred in a fiscal year. Each State will provide a 20 percent match to qualify for the program. In accordance with 49 CFR 350.323, the Basic grant funds will be distributed proportionally to each State's lead MCSAP agency using the following four, equally weighted (25 percent) factors:

(1) 1997 road miles (all highways) as defined by the FMCSA;

(2) All vehicle miles traveled (VMT) as defined by the FMCSA;

(3) Population—annual census estimates as issued by the U.S. Census Bureau; and

(4) Special fuel consumption (net after reciprocity adjustment) as defined by the FMCSA.

A State's lead MCSAP agency may qualify for Incentive Funds if it can demonstrate that the State's CMV safety program has shown improvement in any or all of the following five categories:

(1) Reduction in the number of large truck-involved fatal accidents;

(2) Reduction in the rate of large-truck-involved fatal accidents or maintenance of a large-truck-involved fatal accident rate that is among the lowest 10 percent of such rates for MCSAP recipients and is not higher than the rate most recently achieved;

(3) Upload of CMV accident reports in accordance with current FMCSA policy guidelines;

(4) Verification of Commercial Driver's Licenses during all roadside inspections; and

(5) Upload of CMV inspection data in accordance with current FMCSA policy guidelines.

Incentive funds will be distributed in accordance with 49 CFR 350.327(b).

Prior to the start of each fiscal year, FMCSA calculates the amount of Basic and Incentive funding each State is expected to receive. This information is provided to the States and is made available on the Agency's Web site. The FY 2009 information is available at *http://www.fmcsa.dot.gov/documents/safety-security/ATTCHMNT3-Est-09-Funding-Planning-Dist.pdf.*

It should be noted that MCSAP Basic and Incentive grants are awarded based on the State's submission of the CVSP. The evaluation factors described in the section below titled ''Application Information for FY 2010 Grants'' will not be considered and submission of applications to grants.gov is not necessary.

New Entrant Safety Audit Grants:

Sections 4101 and 4107of SAFETEA–LU also authorize and fund the Motor Carrier Safety Grants for FY 2005 through FY 2009 to enable grant recipients to conduct interstate New Entrant safety audits consistent with 49 CFR Parts 350.321 and 385.301. Eligible recipients are State agencies, local governments, and organizations representing government agencies that use and train qualified officers and employees in coordination with State motor vehicle safety agencies. The FMCSA's share of these grant funds will be 100 percent. New Entrant grant applications must be submitted electronically through grants.gov *(http://www.grants.gov).*

MCSAP High Priority Grants:

Section 4101 of SAFETEA–LU also authorizes and funds the Motor Carrier Safety Grants for FY 2005 through FY 2009 to enable recipients to carry out activities and projects that improve CMV safety and compliance with CMV regulations. Funding is available for projects that are national in scope, increase public awareness and education, demonstrate new technologies and reduce the number and rate of CMV accidents. Eligible recipients are State agencies, local governments, and organizations representing government agencies that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

For grants awarded for public education activities, the Federal share will be 100 percent. For all High Priority grants other than those awarded in support of public education activities, the FMCSA will provide reimbursements for no more than 80 percent of all eligible costs, and recipients will be required to provide a 20 percent match. FMCSA may reserve High Priority funding exclusively for innovative traffic enforcement projects, with particular emphasis on work zone enforcement and rural road safety. Also, FMCSA may reserve funding for an innovative traffic enforcement initiative known as ''Ticketing Aggressive Cars and Trucks'' or TACT. TACT provides a research-based safety model that can be replicated by States when conducting a high-visibility traffic enforcement program to promote safe driving behaviors among car and truck drivers. The objective of this program is to reduce the number of commercial truck and bus related crashes, fatalities and injuries resulting from improper operation of motor vehicles and aggressive driving behavior. More information regarding TACT can be found at *http://www.fmcsa.dot.gov/safety-security/tact/abouttact.htm.*

High Priority grant applications must be submitted electronically through grants.gov.

CMV Operator Safety Training Grants:

Section 4134 of SAFETEA–LU establishes a grant program which enables recipients to train current and future drivers in the safe operation of CMVs, as defined in 49 U.S.C. 31301(4). Eligible awardees include State governments, local governments and accredited post-secondary educational institutions (public or private) such as colleges, universities, vocational-technical schools and truck driver training schools. Funding priority for this discretionary grant funding will be given to regional or multi-state educational or nonprofit associations serving economically distressed regions of the United States. The Federal share of these funds will be 80 percent, and recipients will be required to provide a 20 percent match. CMV Operator Safety Training grant applications must be submitted electronically through grants.gov.

Border Enforcement Grants (BEG):

Section 4110 of SAFETEA–LU established the BEG program. The purpose of this discretionary program is to provide funding for border CMV safety programs and related enforcement activities and projects. An entity or a State that shares a land border with

another country is eligible to receive this grant funding. Eligible awardees include State governments, local governments, and entities (*i.e.*, accredited post-secondary public or private educational institutions such as universities). Requests from entities must be coordinated with the State lead CMV inspection agency. Applications must include a Border Enforcement Plan and meet the required maintenance of expenditure requirement. BEG funding decisions take into consideration the State or entity's performance on previous BEG awards; its ability to expend the awarded funds with the BEG performance year; and activities meeting the BEG national criteria established by the FMCSA. As established by SAFETEA–LU, the Federal share of these funds will be 100 percent, and there is no matching requirement. BEG grant applications must be submitted electronically through grants.gov.

CDLPI Grants:

Section 4124 of SAFETEA–LU includes a discretionary grant program that provides funding for improving States' implementation of the Commercial Driver's License (CDL) program, including expenses for computer hardware and software, publications, testing, personnel, training. Funds may not be used to rent, lease, or buy land or buildings. The agency designated by each State as the primary driver licensing agency responsible for the development, implementation, and maintenance of the CDL program is eligible to apply for grant funding. State grant proposals must include the State's assessment of its CDL and a detailed budget explaining how the funds will be used. The Federal share of funds for projects awarded under this grant is established by SAFETEA–LU as 100 percent. Therefore, there is no State matching requirement. The funding opportunity announcement on grants.gov will provide more detailed information on the application process; national funding priorities for FY 2010; evaluation criteria; required documents and certifications; State maintenance of expenditure requirements; and additional information related to the availability of funds. CLDPI grant applications must be submitted electronically through grants.gov.

CDLIS Modernization Grants:

Section 4123 of SAFETEA–LU includes a discretionary grant program that provides funding for modernization of CDLIS. This section includes funds for States to upgrade their driver licensing information systems for the specific purpose of making them compatible with the new modernized CDLIS specifications. The agency in each State designated as the primary driver licensing agency responsible for the development, implementation, and maintenance of the CDL program is eligible to apply for grant funding. The Federal share of the funds for projects awarded under this grant is established by SAFETEA–LU as 80 percent; there is a 20 percent matching requirement. States may use in-kind contributions to meet this matching requirement (including annual CDLIS pointer fees). Funds are available to any State that is in substantial compliance with the requirements of 49 U.S.C. 31311 and submits a grant proposal that qualifies under the conditions in this notice, including assuming the responsibility of incorporating the new CDLIS specifications and improving its commercial driver licensing system. State grant proposals must include a detailed budget explaining how the funds will be used and how the State will meet the matching requirements. The funding opportunity announcement on grants.gov will provide more detailed information on the application process; eligible projects under the CDLIS Modernization plan; evaluation criteria; required documents and certifications; and additional information related to the availability of funds. CDLIS Modernization grant applications must be submitted electronically through grants.gov.

SaDIP Grants:

Section 4128 of SAFETEA–LU establishes a Safety Data Improvement Program (SaDIP) grant program to improve the quality of crash and inspection truck and bus data reported by the States to FMCSA, as described 49 U.S.C. 31102. Eligible recipients are State agencies, local governments, and organizations representing government agencies that are involved with highway traffic safety activities and must demonstrate a capacity to work with highway traffic safety stakeholders. The State's SaDIP proposal must focus on a project that enhances the accuracy, timeliness, and completeness of the collection and reporting of Commercial Motor Vehicle crash information in all components of the State's record system. An applicant's proposed SaDIP project must address the seven (7) performance measures for completeness, accuracy and timeliness of data reported by the States to FMCSA plus the overriding indicator established for the State Safety Data Quality (SSDQ) program. These measures can be found at: *http://ai.fmcsa.dot.gov/DataQuality/dataquality.asp?redirect=methodology.asp.* FMCSA will provide reimbursements for no more that 80 percent of all eligible costs and recipients are required to provide a 20 percent match.

PRISM Grants:

Section 4109 of SAFETEA–LU provides funding for States to implement the Performance and Registration Information Systems Management (PRISM) requirements that link Federal motor carrier safety information systems with State CMV registration and licensing systems to enable a State to determine the safety fitness of a motor carrier or registrant when licensing or registering or while the license or registration is in effect. PRISM grant applications must be submitted electronically through grants.gov. No matching funds are required.

CVISN Grants:

Section 4126 of SAFETEA–LU provides funding for States to deploy, operate, and maintain elements of their Commercial Vehicle Information Systems and Networks (CVISN) Program, including commercial vehicle, commercial driver, and carrier-specific information systems and networks. The agency in each State designated as the primary agency responsible for the development, implementation, and maintenance of a CVISN-related system is eligible to apply for grant funding.

Section 4126 of SAFETEA–LU distinguishes between two types of CVISN projects: Core and Expanded. To be eligible for funding of Core CVISN deployment project(s), a State must have its most current Core CVISN Program Plan and Top-Level Design approved by FMCSA and the proposed project(s) should be consistent with its approved Core CVISN Program Plan and Top-Level Design. If a State does not have a Core CVISN Program Plan and Top-Level Design, it may apply for up to $100,000 in funds to either compile or update a Core CVISN Program Plan and Top-Level Design.

A State may also apply for funds to prepare an Expanded CVISN Program Plan and Top-Level Design if FMCSA acknowledged the State as having completed Core CVISN deployment. In order to be eligible for funding of any Expanded CVISN deployment project(s), a State must have its most current Expanded CVISN Program Plan and Top-Level Design approved by FMCSA and any proposed Expanded CVISN project(s) should be consistent with its Expanded CVISN Program Plan and Top-Level Design. If a State does not have an Expanded CVISN Program Plan and Top-Level Design, it may apply for up to $100,000 in funds to either compile or update an Expanded CVISN Program Plan and Top-Level Design.

CVISN grant applications must be submitted electronically through grants.gov. Awards for approved CVISN grant applications are made on a first-come, first-served basis. States must provide a match of 50 percent.

Application Information for FY 2010 Grants: General information about the FMCSA grant programs is available in the Catalog of Federal Domestic Assistance (CFDA) which can be found on the Internet at *http://www.cfda.gov.* To apply for funding, applicants must register with grants.gov at *http://www.grants.gov/applicants/get-registered.jsp* and submit an application in accordance with instructions provided.

Evaluation Factors: The following evaluation factors will be used in reviewing the applications for all FMCSA discretionary grants:

(1) Prior performance—Completion of identified programs and goals per the project plan.

(2) Effective Use of Prior Grants—Demonstrated timely use and expensing of available funds.

(3) Cost Effectiveness—Applications will be evaluated and prioritized on the expected impact on safety relative to the investment of grant funds. Where appropriate, costs per unit will be calculated and compared with national averages to determine effectiveness. In other areas, proposed costs will be compared with historical information to confirm reasonableness.

(4) Applicability to announced priorities—If national priorities are included in the grants.gov notice, those grants that specifically address these issues will be given priority consideration.

(5) Ability of the applicant to support the strategies and activities in the proposal for the entire project period of performance.

Use of innovative approaches in executing a project plan to address identified safety issues.

(6) Feasibility of overall program coordination and implementation based upon the project plan.

(7) Grant specific evaluation factors as described in the grants.gov application information.

Proposed Application Due Dates: For the following grant programs, FMCSA will consider funding complete applications or plans submitted by the following dates:

SaDIP Grants—June 1, 2009.

CVISN Grants—July 15, 2009.

MCSAP Basic and Incentive Grants—August 1, 2009.

New Entrant Safety Audit Grants—September 1, 2009.

Border Enforcement Grants—September 15, 2009.

MCSAP High Priority Grants—September 15, 2009.

CMV Operator Safety Training Grants—October 1, 2009.

CDLIP Grants—November 1, 2009.

CDLIS Modernization Grants—November 1, 2009.

PRISM Grants—November 15, 2009.

FMCSA seeks comments from potential grant applicants on the impacts of this schedule on their ability to develop comprehensive applications and submit them on time. Applications submitted after due dates may be considered on a case-by-case basis.

Issued on: March 19, 2009.

Anna J. Amos,

Acting Associate Administrator for Enforcement and Program Delivery.

Terry T. Shelton,

Associate Administrator for Research and Information Technology.

[FR Doc. E9–6473 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–00–7006; FMCSA–06–26066; FMCSA–06–25246]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 19 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on March 9, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 19 renewal applications, FMCSA renews the Federal vision exemptions for Kreis C. Baldridge, James L. Baynes, Daniel H. Bungartz, Steven J. Clark, Donald D. Daniels, Michael A. Fouch, Thanh V. Ha, Carl A. Lohrbach, James E. Menz, Jeffrey L. Olson, Chris H. Pederson, Timmy J. Pottebaum, Donnie Riggs, Luis H. Sanchez, Phillip L. Smith, Randall S. Surber, Brian S. Tuttle, Ernest W. Waff, and Joseph W. Wigley.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: March 18, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–6457 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–00–7363; FMCSA–00–7918; FMCSA–02–13411]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on March 9, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 11 renewal applications, FMCSA renews the Federal vision exemptions for Henry Ammons, Jr., Michael D. Archibald, David S. Carman, Cedric E. Foster, Glen T. Garrabrant, Alan L. Johnston, Dennis I. Nelson, Rance A. Powell, Shannon E. Rasmussen, Garfield A. Smith, and Henry L. Walker.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: March 18, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–6475 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–02–12844; FMCSA–02–12423; FMCSA–04–19477]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 5 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on March 9, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 5 renewal applications, FMCSA renews the Federal vision exemptions for Lester G. Kelley, II, Dennis R. O'Dell, Jr., Jerry W. Parker, Virgil A. Potts, and Henry A. Shelton.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA.

The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: March 18, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–6474 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2009–0001–N–6]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than May 26, 2009.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590, or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number__.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov*, or to Ms. Jackson at *nakia.jackson@dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Nakia Jackson, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6073). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, § 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 provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Filing of Dedicated Cars.

OMB Control Number: 2130–0502.

Abstract: Title 49, Part 215 of the Code of Federal Regulations, prescribes certain conditions to be followed for the movement of freight cars that are not in compliance with this Part. These cars must be identified in a written report to FRA before they are assigned to dedicated service, and the words ''Dedicated Service'' must be stenciled on each side of the freight car body. FRA uses the information to determine whether the equipment is safe to operate and that the operation qualifies for dedicated service. *See* 49 CFR 215.5(c)(2), 215.5(d).

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 718 railroads.

Frequency of Submission: On occasion.

Total Estimated Responses: 4.

Total Estimated Annual Burden: 4 hours.

Status: Regular Review.

Title: Remotely Controlled Switch Operations.

OMB Control Number: 2130–0516.

Abstract: Title 49, Section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for 15 days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 718 railroads.

Frequency of Submission: On occasion.

CFR section	Respondent universe	Total annual responses	Average time per response (minutes)	Total annual burden hours
218.30—Blue signal protection of workmen	70 railroads	3,600,000 notifications	2	120,000
218.77—Protection of occupied camp cars	4 railroads	2,300 notifications	4	153

Total Estimated Responses: 3,602,300.

Total Estimated Annual Burden: 120,153 hours.

Status: Regular Review.

Title: Bad Order and Home Shop Card.

OMB Control Number: 2130–0519.

Abstract: Under 49 CFR Part 215, each railroad is required to inspect freight cars placed in service and take the necessary remedial action when defects are identified. Part 215 defects are specific in nature and relate to items that have or could have caused accidents or incidents. Section 215.9 sets forth specific procedures that railroads must follow when it is necessary to move defective cars for repair purposes. For example, railroads must affix a ''bad order'' tag describing each defect to each side of the freight car. It is imperative that a defective freight car be tagged ''bad order'' so that it may be readily identified and moved to another location for repair purposes only. At the repair point, the ''bad order'' tag serves as a repair record. Railroads must retain each tag for 90 days to verify that proper repairs were made at the designated location. FRA and State inspectors review all pertinent records to determine whether defective cars presenting an immediate hazard are being moved in transportation.

Form Number(s): N/A.

Affected Public: Businesses.

Frequency of Submission: On occasion.

CFR section	Respondent universe	Total annual responses	Average time per response (minutes)	Total annual burden hours
215.9—Movement of Defective Cars for Repair—Tagging	718 railroads	120,000 tags	5	10,000
—Notifications of Removal of Defective Car Tags	718 railroads	60,000 notifications	2	2,000
215.11—Designated Inspectors—Records	718 railroads	45,000 records	1	750

Respondent Universe: 718 railroads.

Total Estimated Responses: 225,000.

Total Estimated Annual Burden: 12,750 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on March 18, 2009.

Kimberly Orben,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E9–6396 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Jefferson Warrior Railroad Company, Inc. (Waiver Petition Docket Number FRA–2008–0126)

The Jefferson Warrior Railroad Company, Inc. (JEFW) seeks a waiver of compliance with the Safety Glazing Standards, 49 CFR Part 223, as they pertain to six SW 1200 and SW 1500 end cab switcher locomotives numbered JEFW 51 through JEFW 56. The locomotive cabs are equipped with a mixture of ''safety glass'' and certified glazing. The locomotives operate over approximately 12 miles of track within an industrial complex and interchange with three Class I railroads.

In support of this application for waiver, JEFW states that all locomotives are equipped for remote control operation and are only occupied approximately 10 percent of the time. The maximum operating speed is 10 miles per hour. JEFW has experienced no accidents or incidents relative to the installed glazing in 23 years of operation at this site.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.* , Waiver Petition Docket Number FRA–2008–0126) and may be submitted by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on March 18, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–6400 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement for Proposed Transit Improvements in the Regional Connector Transit Corridor, Los Angeles, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the Los Angeles County Metropolitan Transportation Authority (LACMTA) intends to prepare an environmental impact statement (EIS) for the Regional Connector Transit Corridor Project in Los Angeles County, California. LACMTA operates the Metro transit system in Los Angeles County. The proposed project would provide a direct link connecting several light rail service lines in operation or in construction through downtown Los Angeles, CA.

The project area lies entirely within the City of Los Angeles and is within the densely developed downtown core that includes multi-family residences, industrial and public lands, commercial and retail establishments, government office buildings, and private high-rise office towers.

The EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) and its implementing regulations. LACMTA will also use the EIS document to comply with the California Environmental Quality Act (CEQA), which requires an Environmental Impact Report (EIR). The purpose of this notice is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed project and possible alternatives, to invite public participation in the EIS process (including providing comments on the scope of the Draft Environmental Impact Statement (DEIS), to announce that public scoping meetings will be conducted, and to identify participating and cooperating agency contacts.

DATES: Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to LACMTA on or before May 11, 2009 at the address below. See **ADDRESSES** below for the address to which written public comments may be sent. Public scoping meetings to accept comments on the scope of the EIS/EIR will be held on the following dates:

- Monday, March 30, 2009; 4:30 p.m. to 6 p.m.; at the University of Southern California (USC), Alumni Room, Davidson Conference Center, 3415 S Figueroa St, Los Angeles, CA 90007.
- Tuesday, March 31, 2009; 6:30 p.m. to 8 p.m.; at the Lake Avenue Church, 393 N Lake Avenue, Pasadena, CA 91101.
- Wednesday, April 1, 2009; 6:30 p.m. to 8 p.m.; at the Japanese American National Museum (JANM), 369 E 1st Street, Los Angeles, CA 90012.
- Thursday, April 2, 2009; Noon to 1:30 p.m.; at the Los Angeles Central Library, Board Room, 630 W 5th Street, Los Angeles, CA 90071.

The project's purpose and need and the description of alternatives for the proposed project will be presented at these meetings. The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in the scoping meeting should contact Ms. Ann Kerman, Community Relations Manager, LACMTA, at (213) 922–7671, or *kermana@metro.net*.

Scoping materials will be available at the meetings and on the LACMTA Web site (*http://www.metro.net/regionalconnector*). Paper copies of the scoping materials may also be obtained from Ms. Ann Kerman, Community Relations Manager, LACMTA, at (213) 922–7671, or *kermana@metro.net*. An interagency scoping meeting will be held on Thursday, March 26, 2009 at 1:30 p.m. at LACMTA, in the Gateway Plaza Room, One Gateway Plaza, Los Angeles, CA 90012. Representatives of Native American tribal governments and of all Federal, State, regional and local agencies that may have an interest in any aspect of the project will be invited to be participating or cooperating agencies, as appropriate.

ADDRESSES: Comments will be accepted at the public scoping meetings or they may be sent to Ms. Dolores Roybal Saltarelli, AICP, Project Manager, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Mail Stop? Los Angeles, CA 90012, or via e-mail at *roybald@metro.net*. The locations of the public scoping meetings are given above under **DATES**.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Tellis, Team Leader, Los Angeles Metropolitan Office, Federal Transit Administration, 888 South Figueroa Street, Suite 1850, Los Angeles, CA 90017, phone (213) 202–3950, e-mail *ray.tellis@dot.gov*.

SUPPLEMENTARY INFORMATION:

Scoping

The FTA and LACMTA invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should focus on: Alternatives that may be less costly or have less environmental or community impacts while achieving similar transportation objectives, and the identification of any significant social, economic, or environmental issues relating to the alternatives.

Project Initiation

The FTA and LACMTA will prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Regional Connector Transit Corridor pursuant to 23 U.S.C. 139 and the California Environmental Quality Act (CEQA). LACMTA is serving as the local lead agency for purposes of CEQA environmental clearance, and FTA is serving as the federal lead agency for purposes of National Environmental Policy Act (NEPA) environmental clearance. This notice shall alert interested parties to the preparation of the EIS/EIR, describe the alternatives under consideration, invite public participation in the EIS/EIR process, and announce the public scoping meetings. FTA and LACMTA will invite interested Federal, State, tribal, regional and local government agencies to be participating agencies under the provisions of section 6002 of SAFETEA–LU.

Purpose and Need for the Project

The purpose of this project is to improve the region's public transit service and mobility. The overall goal of

the project is to improve mobility within the corridor by connecting to the light rail service of the Metro Gold Line to Pasadena, the Metro Gold Line Eastside Extension, the Metro Blue Line, and the Metro Expo Line. This link would serve communities across the region, allowing greater accessibility while serving population and employment growth in downtown Los Angeles. Mobility issues throughout the region and the identified need to join the unconnected segments of the light rail system have been documented in several past studies, including the *Pasadena—Los Angeles Light Rail Transit Project Environmental Impact Report* (1993), the *Blue Line Connection Preliminary Planning Study* (1993), and the *Regional Light Rail Connector Study* (2004).

Additional considerations supporting the need for the Regional Connector Transit Corridor project include: Increased travel times and station overcrowding occurring due to multiple transfers required to traverse the project area; a project area that has many transit dependent residents; poor system connectivity that results in reduced system schedule reliability as current system expansions are completed; and investments within the project area could improve system-wide operations in regards to travel times and safety issues.

Project Location and Environmental Setting

The proposed light rail transit (LRT) project lies entirely within the City of Los Angeles and is generally bounded by U.S. Highway 101 on the north, 7th and 9th Streets on the south, Alameda Street on the east, and State Route 110 on the west. Project length is just under two miles and the LRT alternatives would have up to four stations plus ancillary facilities including power substations. The project area is the largest regional employment center in Los Angeles County, and is densely developed with multi-family residences, industrial and public lands, commercial and retail establishments, government office buildings, and private high-rise office towers.

The proposed Regional Connector project would provide a direct link connecting several light rail service lines in operation or in construction (*i.e.*, the Metro Gold Line to Pasadena, the Metro Gold Line Eastside Extension, the Metro Blue Line, and the Metro Expo Line). The proposed project would create a connection in downtown Los Angeles that would link the Metro Blue and Expo Lines termini at 7th Street/Metro Center Station (7th Street and Flower Street) to the Metro Gold Line (Pasadena and Eastside) at the Little Tokyo/Arts District Station at 1st Street and Alameda Street. This connection would provide through service between the Metro Blue Line to Long Beach, the Metro Gold Line to Pasadena and East Los Angeles, and the Metro Expo Line to Culver City. With the implementation of the Regional Connector project, these four lines would share tracks and stations in downtown Los Angeles.

The various alternatives to be considered for the Regional Connector project generally traverse Flower Street north from 7th Street, 2nd Street between Flower and Alameda, Main and Los Angeles Streets between Temple Street and 2nd Street, Temple Street between City Hall and Alameda Street, and Alameda Street between U.S. Highway 101 and 2nd Street.

Alternatives

The Regional Connector Transit Corridor Final Alternatives Analysis Report (2009) prepared by LACMTA identified four alternatives for further consideration in the EIS/EIR. The four alternatives include: A No-Build Alternative, Transportation System Management (TSM) Alternative, At-Grade Emphasis LRT Alternative, and Underground Emphasis LRT Alternative.

No-Build Alternative: The No Build Alternative would maintain existing transit service through the year 2030. No new transportation infrastructure would be built within the project area aside from projects currently under construction, or funded for construction and operation by 2030 by recently approved Measure R sales tax. Bus transit service under the No Build Alternative would be focused on the preservation of existing services and projects. By the projection year of 2030, some bus service would have been reorganized and expanded to provide connections with the new rail lines; however, the transit network within the project area would largely be the same as it is now.

Transportation Systems Management (TSM) Alternative: The TSM Alternative would include the provisions of the No Build Alternative and add two shuttle bus routes from 7th Street/Metro Center station to Union Station providing a link between the region's unconnected LRT services, one along Grand Ave. and 1st St., and one along Figueroa, Flower, 2nd, and 3rd Streets. The shuttle buses would use existing bus-only lanes, where available, and would be fitted with transit-priority signalization devices similar to those used on Metro Rapid. Stops would be located every few blocks so as to provide full coverage of the area. Each shuttle route would be one and one-half to two miles in length.

At-Grade Emphasis LRT Alternative: This alternative would extend from the underground 7th Street/Metro Center Station, head north under Flower Street, surface to at-grade north of 5th Street, cross 3rd Street, enter Bunker Hill, and turn northeast through a new entrance to the existing 2nd Street tunnel. The alignment would continue along 2nd Street where it would split into an at-grade couplet configuration on Main and Los Angeles Streets (one track on each roadway) to Temple Street. Then it would head east on Temple Street and realign into a dual track configuration just north of the Metro Gold Line Little Tokyo/Arts District Station on Alameda Street. Due to the high volume of trains that would traverse the Regional Connector, an automobile underpass and pedestrian overpass would be constructed at the intersection of Temple and Alameda Streets to eliminate pedestrian-train and automobile-train conflicts.

There are two options for the configuration on Flower Street. For Option A, trains would transition to underground tracks after crossing 3rd Street and continue to a new underground station just south of 5th Street, then proceed to the 7th Street/Metro Center Station and arrive at the existing Metro Blue Line platform. For Option B, trains would arrive at an at-grade station after crossing 3rd Street, then transition to underground tracks near 4th Street to reach the existing Metro Blue Line platform at 7th Street/Metro Center station. In total, the At-Grade Emphasis LRT Alternative would add 1.8 miles of new double track to the light rail system.

In addition to the Option A and Option B Station configurations, other station locations would include a station adjacent to Bunker Hill, south of 2nd Street and Hope Street, and a split station using Main and Los Angeles Streets between 1st and Temple Streets. A fourth optional station on 2nd Street between Broadway and Los Angeles Street will be analyzed.

Underground Emphasis LRT Alternative: From the 7th Street/Metro Center Station, this alternative would extend north along Flower Street with a new underground station north of 5th Street. At 2nd Street, the underground tunnel would extend east with new underground stations to provide access to Bunker Hill and to the area between Los Angeles Street and Broadway. The tunnel would emerge to at-grade connections just southwest of the intersection of 1st and Alameda Streets.

At 1st and Alameda Streets, a new underpass would carry car and truck traffic along Alameda Street below the rail junction, and a new overhead pedestrian bridge structure would eliminate most conflicts between pedestrians and trains. This Alternative would have a single at-grade crossing at the intersection of 1st and Alameda Streets. The rest of the route would be underground. The length of this proposed route would be 1.6 miles.

Station locations for this alternative would all be underground and include the area north of 5th Street on Flower Street, adjacent to Bunker Hill just south of 2nd Street and 2nd Street between Los Angeles and Main Streets.

Probable Effects

The purpose of this EIS/EIR process is to study, in a public setting, the effects of the proposed project and its alternatives on the physical, human, and natural environment. The FTA and LACMTA will evaluate all significant environmental, social, and economic impacts of the construction and operation of the proposed project. Impact areas to be addressed include: transportation, land use, zoning and economic development, secondary development, land acquisition, displacements and relocations, cultural resources (including historical, archaeological, and paleontological resources), parklands/recreational facilities, neighborhood compatibility and environmental justice, visual and aesthetic impacts, natural resources (including air quality, noise and vibration, wetlands, water resources, geology/soils, and hazardous materials), energy use, safety and security, wildlife, and ecosystems. Measures to avoid, minimize, and mitigate adverse impacts will be identified and evaluated.

FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), call for public involvement in the EIS process. Section 6002 of SAFETEA–LU requires that FTA and LACMTA do the following: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become ''participating agencies;'' (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and LACMTA will not be able to identify all Federal and non-Federal agencies and Native American tribes that may have such an interest. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program and a Coordination Plan for public and interagency involvement will be developed for the project and posted on LACMTA's Web site (Regional Connector Transit Corridor Project Web page: *http://www.metro.net/regionalconnector*). The public involvement program includes a full range of activities including the project Web page on the LACMTA Web site, development and distribution of project newsletters, and outreach to local officials, community and civic groups, and the public. Specific activities or events for involvement will be detailed in the public involvement program.

LACMTA may seek New Starts funding for the proposed project under 49 United States Code 5309 and will, therefore, be subject to New Starts regulations (49 Code of Federal Regulations (CFR) part 611). The New Starts regulations also require the submission of certain project-justification information to support a request to initiate preliminary engineering. This information is normally developed in conjunction with the NEPA process. Pertinent New Starts evaluation criteria will be included in the EIS.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations ''Environmental Impact and Related Procedures'' (23 CFR part 771). In accordance with 23 CFR 771.105(a) and 771.133, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the environmental and public hearing provisions of Federal transit laws (49 U.S.C. 5301(e), 5323(b), and 5324); the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93); the section 404(b)(1) guidelines of EPA (40 CFR part 230); the regulation implementing section 106 of the National Historic Preservation Act (36 CFR part 800); the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402); section 4(f) of the Department of Transportation Act (23 CFR 771.135); and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Issued on: March 19, 2009.

Leslie T. Rogers,

Regional Administrator, Region IX, Federal Transit Administration.

[FR Doc. E9–6421 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Solicitation of Comments and Notice of Availability of Fiscal Year 2009 Funding for Transit Investments for Greenhouse Gas and Energy Reduction Grants

AGENCY: Federal Transit Administration, DOT.

ACTION: Interim notice of funding availability, request for comments.

SUMMARY: The American Recovery and Reinvestment Act of 2009 (ARRA) appropriated $100 million for a new discretionary grant program for public transportation projects that reduce a transit system's greenhouse gas emissions or result in a decrease in a transit system's energy use. Because of time limitations in ARRA funding, this notice announces the availability of the new grant program, application requirements, and deadlines for submitting grant proposals for funding. However, because the Transit Investments for Greenhouse Gas and Energy Reduction (TIGGER) program is a new grant program, FTA also is accepting comments on the program's provisions and may alter some of the requirements in response to comments.

DATES: Comments must be received by April 7, 2009. Late-filed comments will be considered to the extent practicable. Complete proposals for the TIGGER Grant Program must be submitted by May 22, 2009.

ADDRESSES: *For Comments:* You must include the agency name (Federal Transit Administration) and the docket number (FTA–2009–0013) with your comments. To ensure your comments are not entered into the docket more than once, please submit comments, identified by the docket number (FTA–2009–0013) by only one of the following methods:

1. *Web site:* The U.S. Government electronic docket site is *www.regulations.gov.* Go to this Web site and follow the instructions for submitting comments into docket number FTA–2009–0013;

2. *Fax:* Telefax comments to 202–493–2251;

3. *Mail:* Mail your comments to U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590; or

4. *Hand Delivery:* Bring your comments to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions for submitting comments: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2009–0013) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. For confirmation that FTA has received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided, and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.*

For Proposals: Proposals must be submitted electronically via e-mail at *FTA–TIGGER@dot.gov.* FTA will announce grant selections in the **Federal Register** when the selection process is complete.

This announcement is available on the Internet on the FTA Web site at: *http://www.fta.dot.gov.* FTA will take all comments into consideration and may publish a follow up document revising some elements of the proposal. If FTA determines that no substantive changes need be made in the Notice of Funding Availability, then all comments will be responded to when FTA publishes a **Federal Register** notice announcing the successful proposals. Proposals must be submitted to FTA electronically at *FTA–TIGGER@dot.gov* and applicants should receive a confirmation e-mail within 2 business days. A synopsis of this announcement will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.* However, applicants will not be able to apply through the APPLY module of that site. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA Regional Office (see Appendix A) for application-specific information and issues. For general program information, contact Walter Kulyk, Office of Mobility Innovation, (202)366–4995, e-mail: *walter.kulyk@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS). A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION: FTA invites interested parties to comment on the TIGGER program elements as outlined below. FTA intends to respond and provide any revisions to the notice of funding availability in a subsequent notice.

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I. Overview of This Notice

The American Recovery and Reinvestment Act (ARRA) was enacted on February 17, 2009. While the total amount in ARRA is $787 billion, $8.4 billion was appropriated to FTA for transit capital improvements and reinvestment. Of this $8.4 billion, $100 million is appropriated for a new program to provide direct funding to public transit agencies for ''capital investments that will assist in reducing the energy consumption or greenhouse gas emissions of their public transportation systems * * * .''

The program will take place in phases. Today's **Federal Register** notice requests proposals be submitted by May 22, 2009. In addition, because this is a new program, we are requesting comments on the proposed program outline, structure, and requirements. FTA will take all comments into consideration and may publish a follow up document revising some elements of its proposal. If FTA determines that no substantive changes need to be made in this Notice of Funding Availability (NOFA), all comments will be responded to when FTA publishes a **Federal Register** notice announcing the successful proposals. If substantive changes are necessary, FTA may publish a supplemental **Federal Register** notice and request for applications. Depending on the nature of the comments and the number of initial proposals received, FTA may award funds based on the initial proposals.

The ARRA authorizes two purposes for these new grants: first, for capital investments that will assist in reducing the energy consumption of a transit system; or, second, for capital investments that will reduce greenhouse gas emissions of a public transportation system. Proposals for projects may be submitted under either or both categories. To ensure that the purposes of the ARRA are met, FTA has established a range of funding that will be considered for approval. Each submitted proposal must request a minimum of $2,000,000. FTA will allow consolidated proposals from transit agencies to reach this $2,000,000 threshold, thus, individual projects within a proposal may receive less than $2,000,000. Conversely, to ensure a variety of projects are funded, FTA has established a maximum grant amount of $25,000,000.

II. Eligibility Information

A. Eligible Recipients

Eligible recipients under this program are public transportation agencies.

B. Eligible Applicants

Any public transportation agency may apply. Since the minimum proposal that will be accepted is $2,000,000, eligible applicants may submit a consolidated proposal either directly, through a designated recipient, a Metropolitan Planning Organization (MPO), State Transit Association, Transportation Management Association (TMA), or through a State Department of Transportation. Grant awards will be made for particular projects directly to public transportation agencies.

C. Eligible Expenses

Eligible expenses must meet the following criteria: (1) The expense must be an eligible capital expense as defined under 49 U.S.C. 5302(a)(1); and (2) The project will assist in the reduction of the energy consumption of a public transportation system or the reduction of greenhouse gas emissions of a public

transportation system. This excludes some elements of the statutory definition of a capital project, such as fleet expansion or fixed guideway extensions because these types of projects would increase transit agency energy consumption.

D. Cost Sharing or Matching

The Federal share for TIGGER grants is 100 percent, although applicants may request a lower Federal share.

III. Proposal and Submission Information

A. Proposal Submission Process

Proposals must be submitted by e-mail to *FTA–TIGGER@dot.gov.* A synopsis of this announcement will be posted in the ''FIND'' module of the government-wide electronic grants Web site at *http://www.grants.gov.* However, applicants will not be able to apply through the ''APPLY'' module of that site. *Mail and fax submissions will not be accepted.*

Because funding in the ARRA programs is intended to sustain or create jobs and promote economic recovery, each proposed project should be ready to implement once the grant is awarded and should be completed in a reasonable period of time.

Successful applicants will apply for funds through FTA's TEAM system. FTA may require revisions, such as a reduction in project budget, before a grant award is submitted in TEAM.

B. Proposal Content

Proposals may contain one project from one transit agency, projects from multiple public transit agencies, or multiple projects from one public transit agency. Combined proposals must contain applicant information for each agency. Proposals with multiple projects must contain project information for each project. See Appendix C for an outline of proposal requirements.

(1) Proposal Summary

A proposal should include a list of each project and sponsoring applicant.

(2) Applicant Information

This addresses basic identifying information, including:

a. Applicant name;

b. Contact information (including contact name, address, e-mail address, phone number and fax number;

c. Description of services provided by the agency, including areas served;

d. If proposal includes vehicles, include existing fleet information, such as a current rail or bus fleet management plan, if not already on file with the FTA Regional Office, and

e. A description of your technical capacity to implement the proposed project.

(3) Project Information

For each project, every proposal must: (a) Identify whether the project is to be evaluated under energy reduction or greenhouse gas reduction criteria or both criteria; (b) Describe the scope of the project, including the proposed capital investment as well as the existing system, subsystem, facility, vehicle, or component that the investment will replace or be applied to. The project scope determines where measurement of energy reductions or greenhouse gas emissions reductions will take place and must be directly related to the actual capital investment. It should be determined in a manner that permits measurement before and after the investment to determine either the energy savings or greenhouse gas reductions. For example, a project could consist of replacing 10 buses in a 100 vehicle bus fleet with more energy-efficient buses. In this case, measurement would focus on the 10 vehicles, not the entire fleet. As another example, a project could consist of including wayside energy storage for a rail system to capture regenerated energy. In this case, the measurement could focus on the energy use of the rail lines where the investment takes place, not the entire rail system. As a third example, a project could consist of multiple investments (*e.g.*, compact fluorescents, solar panels) to reduce the energy use of a bus maintenance facility. In that case, the measurement could be the energy use of the entire facility; (c) Provide a line item budget for the project and its total cost and for scalable projects include the minimum amount necessary to implement the project if FTA were not to fund the total cost; (d) Identify the expected useful life of the investment; and (e) Provide brief project time-line outlining steps from project development through completion, including significant milestones such as date of contract awards and dates of project implementation (*e.g.* when vehicles will begin revenue service).

(4) Project Measurement Information

A proposal must provide narrative information for each project describing how the estimates provided in the summary tables were calculated. See Appendix D—Project Measurement Guidelines provides information on the step-by-step process agencies should follow in developing their calculations. The proposals should provide information for each step described in Appendix D. Proposals also should identify the process the agency will use to determine the actual energy savings or greenhouse gas emission reductions realized once the investment is implemented.

(5) A proposal should include a project measurement summary for either or both the energy consumption reduction or greenhouse gas emission reduction programs. (See Appendix E—Tables.) FTA will post on its Web site: *www.fta.dot.gov* a Microsoft Excel spreadsheet that may be used to develop these tables.

(6) A proposal should address each of the evaluation criteria separately.

C. Funding Restrictions

Only proposals from eligible recipients for eligible activities will be considered for funding (see Section III of this Notice). FTA may decide to provide only partial funding for certain proposals to maximize the impact of this program.

IV. How Proposals Will Be Evaluated

Energy consumption reduction and greenhouse gas reduction projects will be evaluated separately. An applicant may request evaluation under both criteria if it provides the necessary project measurement information. Two criteria are specific to energy consumption reduction projects and one criterion is specific to greenhouse gas reduction projects. The remaining criteria apply to all projects.

A. Project Evaluation Criteria for Energy Consumption Reduction Projects

FTA will evaluate projects on total energy consumption savings projected to result from the project, and projected energy savings of the project as a percentage of the total energy usage of the public transit agency. Refer to Appendix B for definitions.

B. Project Evaluation Criterion for Greenhouse Gas Emission Reduction Projects

FTA will evaluate projects based on the total amount of greenhouse gas reductions projected to result from the project.

C. Project Evaluation Criteria for All Projects

In addition, FTA will evaluate all projects on the following criteria:

(1) Return on Investment. This includes the ratio of energy savings or greenhouse gas reductions per dollar of Federal TIGGER funds invested.

(2) Project Readiness. The Project Is Ready To Implement.

a. Any required environmental work has been initiated for construction

projects requiring an Environmental Finding.

b. Implementation plans are ready, including initial design of facilities projects.

c. the Metropolitan Transportation Improvement Program/State Transportation Improvement Program (TIP/STIP) can be amended.

d. Project can be obligated and implemented quickly, if selected.

(3) The applicant demonstrates the capacity to carry out the project.

a. The applicant is in fundable status for the FTA grant program

b. The applicant demonstrates the technical capacity to carry out the project including the project approach or project management plan.

c. The applicant has systems and internal controls in place that allow it to separately track and report ARRA funds even used to fund an existing project/activity.

d. The applicant has the ability to collect information and demonstrate the results of the project for at least one year following project implementation.(But note that useful life criteria apply for FTA funded assets.)

(4) Project Innovation. The project identifies a unique, significant, or innovative approach to reducing energy consumption or greenhouse gas emissions not currently in widespread practice within the transit industry or an approach distinct from the other proposals received by FTA.

(5) The national applicability of the project as an example of energy savings or greenhouse gas reductions including whether the project could be replicated by other transit agencies regionally or nationally.

D. Review and Selection Process

Proposals first will be screened by FTA program staff. After evaluating proposals based on the established technical criteria, the FTA review team will provide recommendations to the FTA Administrator. FTA will publish the list of all selected projects and funding levels in the **Federal Register**.

V. Award Administration Information

A. Award Notices

FTA will screen all proposals to determine whether all required eligibility elements, as described in III. ''Eligibility Information'' are provided. Once proposals have been reviewed and projects have been selected, FTA will award funds to the public transit agency to implement the project. FTA will award funding to successful applicants through a grant in FTA's TEAM grant management system. These grants will be administered and managed by FTA regional offices in accordance with the federal requirements of 49 U.S.C. Chapter 53.

B. Administrative and National Policy Requirements

Information about general requirements for FTA grant programs funded by ARRA can be found in the Federal Register Notice American Recovery and Reinvestment Act of 2009 Public Transportation Apportionments, Allocations and Grant Program Information, (74 FR 9656, March 5, 2009) and posted on our Web site (*www.fta.dot.gov*).

(1) Grant Requirements. If selected, project sponsors will apply for a grant through TEAM and adhere to the customary FTA grant requirements of 49 U.S.C. Chapter 53, including those identified in FTA Circular 5010.1D and the FTA Master Agreement. Technical assistance regarding these requirements is available from each FTA regional office.

All recipients and their sub-awardees are required to have a DUNS number (*www.dnb.com*) and a current registration in the Central Contractor Registration (*www.ccr.gov*).

Recipients of ARRA funds must have systems and internal controls that allow them to separately track and report ARRA funds even if the funds are being used to fund an existing project/activity.

Applicants must sign and submit current Certifications and Assurances before receiving a grant. Annual certifications and assurances filed by a grantee for Fiscal Year 2009 under FTA's regular program meet this requirement. The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

FTA will not amend its standard grant agreement for the purposes of the ARRA. However, to the extent the ARRA imposes additional requirements they will be reflected as special conditions in individual grant documents.

(2) Planning. Applicants are encouraged to notify the appropriate State DOT and MPO in areas likely to be served by the project funds made available under this program. Incorporation of funded projects in the long range plans and transportation improvement programs of States and metropolitan areas is required of all funded projects. FTA cannot obligate grant funds unless the project is contained in a federally approved STIP.

Similarly, all environmental requirements must be complete before FTA can obligate and award a grant in TEAM.

C. Reporting Requirements

FTA reporting requirements include standard reporting requirements identified in FTA Circular 5010.1D, and the Master Grant Agreement. In addition under ARRA, *the TIGGER program has additional reporting requirements.* A recipient of TIGGER funds must report on an annual basis:

(1) Actual annual energy consumed within the project scope attributable to the investment, for energy consumption reduction projects;

(2) Actual greenhouse gas emissions within the project scope attributable to the investment, for greenhouse gas reduction projects;

(3) Actual annual reductions or increases in operating costs attributable to the investment, for all projects.

As a condition of award, grantees receiving ARRA funds will be required to report on grant activities on a routine basis. FTA grantees will be responsible for reporting up-to-date and accurate information in a milestone status report and financial status report on a quarterly basis, as well as additional data elements that are required to be reported in *www.recovery.gov.* Additionally, special certifications and grant conditions also will be required of ARRA grant recipients, such as:

a. *One-Time Funding.* The Recipient acknowledges that receipt of ARRA funds is a ''one-time'' disbursement that does not create any future obligation by the FTA to advance similar funding amounts.

b. *Integrity.* The Recipient agrees that all data it submits to FTA in compliance with ARRA requirements will be accurate, objective, and of the highest integrity.

c. *Violations of Law.* The Recipient agrees that it and its subrecipients shall report any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim

under the False Claims Act or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

d. *Maintenance of Effort.* A Recipient that is a State agrees to comply with the maintenance of effort certification it has made in compliance with Section 1201 of ARRA.

e. *Emblems.* The Recipient agrees to identify projects supported by FTA by attaching the appropriate emblems as the Federal Government may require.

f. *Reporting Requirements.* In addition to other Federal reporting requirements applicable to the type of project undertaken, the Recipient agrees to

(1) Comply with the reporting requirements of ARRA, Section 1201(c) and (f).

(2) Comply with reporting requirements and deadlines of ARRA, Section 1512. Therefore, the Recipient reports on the use of the funds and on the status of compliance with the National Environmental Policy Act by submitting the Standard Form-Performance Progress Report-Recovery form not later than 10 days after the end of each calendar quarter to FTA. The Recipients agree to obtain a Dun and Bradstreet Universal Numbering System (DUNS) number (*www.dnb.com*) for any first tier subrecipient that does not have a DUNS number, and agrees to maintain, and require its first tier subrecipients to maintain, active and current profiles in the Central Contractor Registration database (*www.ccr.gov*).

g. *Further Requirements.* The Recipient agrees to comply with any applicable future Federal requirements that may be imposed on the use of ARRA funds.

FTA will issue additional specific guidance on reporting requirements in the near future for your information. The ARRA statutory reporting requirements and certifications are identified below:

(1) Section 1511: Certifications

For covered funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, is required to certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification must include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and must be posted on a specified Web site. A State or local agency may not receive infrastructure funds made available under ARRA unless this certification is made and posted.

On February 27, 2009, USDOT Secretary LaHood sent letters to all Governors providing guidance and a template for this certification and instructing them to send the Section 1511 certification and the other two certifications by the Governor described below to the Department at the following address: *TigerTeam@dot.gov.* A single certification by the Governor, based on the established planning process, and including a link to a Web site posting of the Statewide Transportation Improvement Program, which must contain the required section 1511 information for each investment, will satisfy the requirement for certification by the Governor for both FHWA and FTA projects. FTA will provide further guidance in the near future about any additional certifications that may be required by local officials to ensure that all ARRA projects have been properly vetted.

(2) Section 1512: Reports on Use of Funds

Recipient Reports.—Not later than 10 days after the end of each calendar quarter, each recipient of ARRA funds from a Federal agency shall submit a report to that agency that contains—

(A) The total amount of recovery funds received from that agency;

(B) The amount of recovery funds received that were expended or obligated to projects or activities; and

(C) A detailed list of all projects or activities for which recovery funds were expended or obligated, including—

(i) The name of the project or activity;

(ii) A description of the project or activity;

(iii) An evaluation of the completion status of the project or activity;

(iv) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and

(v) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under ARRA, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

(D) detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

The data elements required to comply with Public Law 109–282 are: name of entity receiving the award; the amount of the award; information on the award including transaction type, funding agency, the North American Industry Classification System Code or Catalog of Federal Domestic Assistance number (where applicable); program source; and an award title descriptive of the purpose of each funding action.

FTA will extract as much as possible of this information from grant information and standard reports provided through its TEAM electronic grants award and management system. Supplemental reporting may be required, however, to provide the project and contract level information. FTA will provide further reporting instructions at a later date. FTA is working with other modal administrations within the United States Department of Transportation (USDOT) to standardize the information required from all USDOT recipients.

Additional frequency of reporting may be required to be responsive to Congressional oversight requirements.

(3) Section 1512(h): Registration

Recipients of ARRA funds that are required to report information per section 1512(c) (4) must register with Central Contractor Registration database (CCR) or complete other registration requirements as determined by the Director of the Office of Management and Budget (OMB).

The reporting and registration requirements are effective September 1 2009. OMB has not yet determined whether to use the CCR or some other registration database. However, OMB has issued guidance requiring FTA and other Federal agencies to ensure that grantees and first tier subawardees (subrecipients and contractors) obtain a DUNS number, or update their DUNS record if necessary. OMB has not yet issued a final determination on the extent to which subawardees will be required to register in CCR.

(4) Section 1201(a): Maintenance of Effort

Not later than March 19, 2009, for each amount that is distributed to a State or its agency from an appropriation in ARRA for a covered program, the Governor of that State is required to certify to the Secretary of Transportation that the State will maintain its effort with regard to State funding for the types of projects that are funded by the appropriation. As part of

this certification, the Governor is required to submit to the Secretary of Transportation a statement identifying the amount of funds the State planned to expend from State sources as of February 17, 2009, during the period of February 17, 2009 through September 30, 2010, for the types of projects that are funded by the appropriation.

This requirement applies only to State funding for transportation projects eligible for ARRA funding. USDOT will treat this maintenance of effort requirement through one consolidated certification from the Governor to the Secretary, which must include State funding for transit projects, as well as highway and other transportation modal projects.

(5) Section 1201(2)(c): Periodic Reports

For amounts received under each covered program by a grant recipient under ARRA, the grant recipient shall include in the periodic reports information tracking:

(A) The amount of Federal funds appropriated, allocated, obligated, and outlaid under the appropriation;

(B) the number of projects that have been put out to bid under the appropriation;

(C) the number of projects for which contracts have been awarded under the appropriation and the amount of Federal funds associated with such contracts;

(D) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts;

(E) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts;

(F) the number of direct, on-project jobs created or sustained by the Federal funds provided for projects under the appropriation and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of job-years created and the total increase in employment since February 17, 2009 and

(G) the actual aggregate expenditures by each grant recipient from State sources for projects eligible for funding under the program during the period of February 17, 2009 through September 30, 2010, as compared to the level of such expenditures that were planned to occur during such period as of the date of enactment of the ARRA.

Each grant recipient is required to submit the first of the periodic reports required not later than 90 days from February 17, 2009.

FTA will extract as much of this information as possible from grant information and standard reports provided through the TEAM electronic grants award and management system. Supplemental reporting may be required, however, to provide the project and contract level information. FTA will provide further reporting instructions at a later date. FTA is working with other modal administrations within DOT to standardize the information required from all DOT recipients, including the possibility of generating the required jobs data through the use of economic models and factors applied to the data provided in the grant awards and other information reported by the grantee.

(6) Section 1607

Section 1607 requires that the Governor certify within 45 days of enactment (April 3, 2009) that, for funds provided, the state will request and use funds provided by this Act and the funds will be used to create jobs and promote economic growth. If the Governor does not provide this certification, then the state legislature may act to accept the funds.

(7) Section 1609

Under section 1609(c), FTA is required to report to certain congressional committees every 90 days following enactment on the status and progress of projects funded or proposed for funding under the ARRA with respect to compliance with the National Environmental Policy Act (NEPA) and its implementing regulations. FTA will request assistance from grant recipients in compiling this quarterly report.

(8) Other Reporting

To satisfy the needs for transparency and accountability related to funding appropriated under the ARRA, grantees may be required to provide additional information not yet specified in response to requests from the Office of Management and Budget (OMB), the Congressional Budget Office (CBO), the Government Accountability Office (GAO), or the USDOT Inspector General (IG) or the Recovery Accountability and Transparency Board. FTA will inform grantees if and when such additional reports are required.

VI. Technical Assistance

FTA will post answers to common questions about the program as well as a Microsoft Excel spreadsheet for assistance in calculations at *www.fta.dot.gov.* Technical assistance regarding these requirements is available from each FTA regional office. The regional offices will contact those applicants selected for funding regarding general and ARRA-specific grants and reporting requirements and will provide assistance in preparing the documentation necessary for the grant award.

Contact the appropriate FTA Regional or Metropolitan Office (see Appendix A) for application-specific information and issues. For general program information, contact Walter Kulyk, Office of Mobility Innovation, (202) 366–4995, e-mail: *walter.kulyk@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

Issued in Washington, DC, this 19th day of March, 2009.

Matthew J. Welbes,

Acting Deputy Administrator.

APPENDIX A—FTA REGIONAL AND METROPOLITAN OFFICES

Richard H. Doyle, Regional Administrator, Region 1-Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617 494–2055.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Brigid Hynes-Cherin, Regional Administrator, Region 2-New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. No. 212 668–2170.

States served: New Jersey, New York, New York Metropolitan Office, Region 2-New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.

Robert C. Patrick, Regional Administrator, Region 6-Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817 978–0550.

States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7-Kansas City, MO 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816 329–3920.

States served: Iowa, Kansas, Missouri, and Nebraska.

APPENDIX A—FTA REGIONAL AND METROPOLITAN OFFICES—Continued

Letitia Thompson, Regional Administrator, Region 3-Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215 656–7100. States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia. Philadelphia Metropolitan Office, Region 3-Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7070. Washington, DC Office, 1990 K St NW., Suite 510, Washington, DC 20006. Phone: (202) 219–3562 or (202) 219–3565, Fax: (202) 219–3545.	Terry Rosapep, Regional Administrator, Region 8-Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300. States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Yvette Taylor, Regional Administrator, Region 4-Atlanta, 230 Peachtree Street, NW., Suite 800, Atlanta, GA 30303, Tel. 404 562–3500. States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.	Leslie T. Rogers, Regional Administrator, Region 9-San Francisco, 201 Mission Street, Suite 1650, San Francisco, CA 94105–1926, Tel. 415 744–3133. States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands. Los Angeles Metropolitan Office, Region 9-Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.
Marisol Simon, Regional Administrator, Region 5-Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312 353–2789. States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin, Chicago Metropolitan Office, Region 5-Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.	Rick Krochalis, Regional Administrator, Region 10-Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206 220–7954. States served: Alaska, Idaho, Oregon, and Washington.

Appendix B—Glossary of Terms

Energy Use of the Public Transportation System is energy expressed in British Thermal Units (BTUs) (*e.g.*, fuel, electricity, steam) using the lower (net) heating value purchased directly by the public transportation system. It includes both revenue and non revenue operations directly operated by the agency, but not energy used for purchased services. It includes fuel used by an agency to generate energy, but not energy generated by an agency. As an example, a diesel generator operated by an agency would count the diesel used by the generator but not the electricity produced by the generator. Energy produced on-site using solar or wind power is also not counted as part of consumption.

Greenhouse Gases are gases that trap heat in the atmosphere expressed in metric tons of CO_2 equivalent. The principal greenhouse gases that enter the atmosphere because of human activities are: Carbon Dioxide (CO_2); Methane (CH_4); Nitrous Oxide (N_2O); and Fluorinated Gases (Hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride)

Greenhouse Gas Emissions of the Public Transportation Agency are greenhouse gas emissions from public transportation systems vehicles or facilities, otherwise known as direct emissions. It does not include indirect emissions (*e.g.*, from third-party power plants) or displaced emissions (*e.g.*, emissions from manufacturing transit equipment, waste disposal, emissions released outside the transit agency service area, etc.)

Project is the proposed capital investment as well as the existing system, subsystem, facility, vehicle, or component that the investment will replace or be applied to. The project scope determines where measurement of energy reductions or emissions reductions will take place and must be directly related to the actual capital investment.

Total Project Energy Savings is the estimated annual project energy savings multiplied by the expected useful life of the investment.

Total Project Greenhouse Gas Emission Reductions is the estimated annual project greenhouse gas emission reductions multiplied by the expected useful life of the investment.

Appendix C—Proposal Outline

Each proposal must contain the following information.

1. A list of each project, and sponsoring applicant

2. Applicant information: For each transit agency included in the proposal, the information should include:

a. Applicant name,
b. Contact information
c. Description of services provided by the agency and areas served
d. If proposal includes vehicles, include existing fleet information, such as a current rail or bus fleet management plan, if not already on file with the FTA Regional Office, and
e. A description of their technical, legal, and financial capacity to implement the proposed project.

3. Project Information: For each project proposed, the information should include:

a. Whether the project is to be evaluated under energy reduction, greenhouse gas reduction criteria, or both.
b. A description of the scope of the project.
c. Provide a line item budget for the project and its total cost and for scalable projects include the minimum amount necessary to implement the project if FTA were not to fund the total cost.
d. Identify the expected useful life of the investment
e. Provide brief project time-line outlining steps from project development through completion, including significant milestones such as date of contract awards and dates of project implementation (*e.g.* when vehicles will begin revenue service).

4. Project Measurement Criteria for Energy Reduction projects: Proposals should identify the process the agency will use to determine the actual energy savings once the investment is implemented. For each project proposed to reduce energy consumption the proposal should include:

a. Project's Current Annual Energy Use
b. Project's Estimated Annual Energy Use
c. Project's Estimated Annual Energy Savings
d. Project's Total Energy Savings
e. Project's Total Energy Savings as a Percentage of the Agency's Total Energy Use. This can be reported as less than one percent or the proposal must include:
i. Total reported Energy Consumption
ii. Total non-reported Energy Consumption
iii. Total Energy Consumption of the Public Transportation Agency
iv. The Project's Total Energy Savings as a percentage of the Total Energy Consumption of the Public Transportation Agency

5. Project Measurement Criteria for Greenhouse Gas Emission Reduction projects: Proposals should identify the process the agency will use to determine the greenhouse gas emission reductions once the investment is implemented. For each project proposed to reduce greenhouse gas emissions the proposal should include:

a. Project's Current Annual Greenhouse Gas Emissions
b. Project's Estimated Annual Greenhouse Gas Emissions

c. Project's Estimated Annual Greenhouse Gas Savings
d. Project's Total Greenhouse Gas Savings

6. Project Measurement Summaries (Tables 1 and or 2 in Appendix C). FTA will post on its Web site: *www.fta.dot.gov* a Microsoft Excel spreadsheet that may be used to develop these tables.

7. Address each of the evaluation criteria separately.

a. Return on Investment—no additional information is required
b. The Project Is Ready To Implement—the proposal should address whether:
i. Any required environmental work has been initiated for construction projects requiring an Environmental Finding.
ii. Implementation plans are ready, including initial design of facilities projects.
iii. TIP/STIP can be amended.
iv. Project can be obligated and implemented quickly, if selected.
c. The applicant demonstrates the capacity to carryout the project—the proposal should address whether:
i. The applicant is in fundable status for the FTA grant program
ii. The applicant demonstrates the technical capacity to carry out the project, including the project approach or project management plan.
iii. The applicant has systems and internal controls that allow them to separately track and report Recovery Act funds even if the funds are being used to funds an existing project/activity.
iv. The applicant has the ability to collect information on the results of the project for one year following the project's implementation.
d. The degree of innovation in a project—the proposal should address whether the project identifies a unique or significant approach to reducing energy consumption or greenhouse gas emissions not currently in widespread practice within the industry or an approach distinct from the other proposals received.
e. The national applicability of the project as an example of energy savings or greenhouse gas reductions—the proposal should address whether the project identified could be replicated by other transit agencies regionally or nationally.

Appendix D—Project Measurement Guidelines

I. Projects Measured Under The Energy Consumption Reduction Focus of ARRA

Energy consumption is the total annual energy (*e.g.*, fuel, electricity, steam) purchased directly by the public transportation system. It includes both revenue and non revenue operations directly operated by the agency, but not energy used for purchased services. It includes fuel used by an agency to generate energy, but not energy generated by an agency. As an example, a diesel generator operated by an agency would count the diesel used by the generator but not the electricity produced by the generator. Energy produced on-site using solar or wind power is also not counted as part of consumption.

When calculating energy consumption, all initial figures should be expressed in both the typical units for that energy source (*e.g.* gallons or kWh) and in British Thermal Units (BTUs), using the lower (net) heating value. The Center for Transportation Analysis of Oakridge National Laboratory of the Department of Energy provides information and links on how to convert typical energy units to BTUs in the Transportation Energy Data Book at *http://cta.ornl.gov/data/tedb27/Edition27_Appendix_B.pdf.* All final calculations should be performed in BTUs. Agency's annual data should be based on the most recent year for which 12 continuous months of data is available, but no earlier than 2007 data.

A. Total Project Energy Savings

(i) Project's Current Annual Energy Use. The proposal must identify the current annual energy use of the project scope that the proposed investment is to be applied to or replace and describe how this was calculated.

(ii) Project's Estimated Annual Energy Use. The proposal must identify the estimated annual energy use of the same project scope for when the project is implemented.

(iii) Project's Annual Energy Savings. The proposal must subtract the project's estimated annual energy use from the project's current annual energy use. This is the estimated annual project energy savings.

(iv) Total Project Energy Savings. The proposal must multiply the estimated annual project energy savings by the expected useful life of the investment.

B. Total Project Energy Savings as a Percentage of the Total Energy Use of the Public Transportation Agency

(i) For some projects, the estimated total project energy savings as a percentage of the total energy use of the public transportation system will be less than one percent. In those cases the proposal may identify the total savings as less than one percent without further calculations provided.

(ii) If the agency estimates that the total project energy savings as a percentage of the total energy use of the public transportation system will be greater than one percent, the proposal must include the following:

(1) Reported Energy Consumption. The proposal must identify directly operated annual bus and rail propulsion energy consumption. This is normally reported to the National Transit Database (see ''Table 17: Energy Consumption by Public Transit Entity''). However, the proposal should use data from the same time period as being used for the rest of the calculations, which is not necessarily the data reported in NTD.

(2) Non-reported Energy Consumption. The proposal must estimate energy consumption for all energy consumed by the agency not reported in Table 17. The estimate should include a listing of what related vehicles, facilities, systems, and equipment are included and how the total energy consumption for each was calculated. This will need to be supported by the applicant's own data.

(3) Total Energy Use of the Public Transportation Agency. The proposal must add reported energy consumption with non-reported energy consumption.

(4) For each project, the proposal must divide the estimated total project energy savings by the total energy use of the public transportation agency.

II. Projects To Be Evaluated Under Greenhouse Gas Reduction Focus of the ARRA

Only projects that will reduce greenhouse gas emissions of the public transportation system, otherwise known as direct emissions (*e.g.* emissions from their vehicles or facilities) are eligible under this program. Projects intended to reduce indirect emissions (*e.g.*, from third-party power plants) or displaced emissions (*e.g.*, emissions from manufacturing transit equipment, waste disposal, emissions released outside the transit agency service area, etc.) are ineligible. As an example, an electric heavy-rail system consuming electricity purchased from a third-party power plant would be considered to have zero greenhouse gas emissions, irrespective of the type of power plant or the greenhouse gases emitted in the production and construction of the system and equipment.

The most common greenhouse gas emitted by public transportation agencies is carbon dioxide (CO_2). If the proposal estimates reductions to other greenhouse gases they must be converted to their CO_2 equivalent. Agency's annual data should be based on the most recent year they for which a full year's worth of data is available, but no earlier than 2007 data.

In most cases, CO_2 emissions should be calculated by multiplying energy use by an appropriate emission factor (*e.g.*, approximately 9.17 kg of CO_2 are emitted per gallon of diesel fuel burned) outlined below. The Environmental Protection Agency provides information and a calculator on greenhouse gas conversions at: *http://www.epa.gov/solar/energy-resources/calculator.html.*

Data should be reported in metric tons of CO_2 equivalent. If an agency uses another procedure, it should clearly justify and describe its calculations.

A. Project's Total Estimated Greenhouse Gas Reduction

(i) Project's Current Annual Greenhouse Gas Emissions. The proposal must identify the current greenhouse gas emissions of the project scope that the proposed investment is to be applied to or replace.

(1) The proposal should identify the energy source, the project's current annual energy use (as calculated above), and multiply the project's current annual energy use by the appropriate emission factor.

(2) Project's Estimated Annual Greenhouse Gas Emissions. The proposal must identify the estimated annual greenhouse gas emissions of the same project scope when the project is implemented.

(a) The proposal should identify the project's new energy source (if applicable), the project's estimated annual energy use (as calculated above), and multiply the project's estimated annual energy use by the appropriate emission factor.

(b) Project's Estimated Annual Greenhouse Gas Reduction. The proposal must subtract the project's estimated annual greenhouse gas emissions from the project's current annual greenhouse gas emissions.

(c) Project's Estimated Total Greenhouse Gas Reduction. The proposal must multiply the project's estimated annual greenhouse gas reduction by the estimated useful life of the investment.

Appendix E—Tables

FTA will post on its Web site: *www.fta.dot.gov* a Microsoft Excel spreadsheet that may be used to develop these tables.

TABLE 1—FOR ENERGY CONSUMPTION REDUCTION PROJECTS

A1. Agency.	A2. Total Agency Reported Energy Use.	A3. Total Agency Non-Reported Energy Use.	A4. Total Agency Energy Use.	Note: For some projects, the estimated total project energy savings as a percentage of the total energy use of the public transportation system will be less than one percent. In those cases the proposal may identify the total savings as less than one percent for E8 and need not fill in A2–A4.				
Agency X	xx	xx	xx					
E1. Project Scope (Title) ..		E2. Cost	E3. Estimated Project Useful Life.	E4. Project's Current Annual Energy Use.	E5. Project's Estimated Annual Energy Use.	E6. Project's Annual Energy Savings.	E7. Total Project Energy Savings.	E8. Total Savings as % of Total Use
Project 1		Project Cost ..	xx	xx	xx	E4–E5	E5 X E3	E7/A4
Project 2		Project Cost ..	xx	xx	xx	E4–E5	E5 X E3	E7/A4
Project 3		Project Cost ..	xx	xx	xx	E4–E5	E5 X E3	E7/A4

TABLE 2—FOR GREENHOUSE GAS EMISSION REDUCTION PROJECTS

Agency name:						
G1. Project scope (Title)	G2. Cost	G3. Estimated project useful life	G4. Project's current annual CO_2 equivalent emissions	G5. Project's estimated annual CO_2 equivalent emissions	G6. Project's estimated annual CO_2 emission reductions	E7. Total project CO2 emission reductions
Project 1	Project Cost	xx	xx	xx	G4–G5	G6 X G3
Project 2	Project Cost	xx	xx	xx	G4–G5	G6 X G3

[FR Doc. E9–6420 Filed 3–23–09; 8:45 am]
BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2009–0056]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 26, 2009.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gary R. Toth, Office of Data Acquisitions (NVS–410), Room W53–303, 1200 New Jersey Avenue, SE., Washington, DC 20590. Mr. Toth's telephone number is (202) 366–5378. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d), an agency must ask for public comment on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How 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, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public

comments on the following proposed collections of information:

Title: National Automotive Sampling System (NASS).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2127–0021.

Affected Public: Passenger Motor Vehicle Operators.

Abstract: The collection of crash data that support the establishment and enforcement of motor vehicle regulations that reduce the severity of injury and property damage caused by motor vehicle crashes is authorized under the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563, Title 1, Sec. 106, 108, and 112). The National Automotive Sampling System (NASS) Crashworthiness Data System (CDS) of the National Highway Traffic Safety Administration investigates high severity crashes. Once a crash has been selected for investigation, researchers locate, visit, measure, and photograph the crash scene; locate, inspect, and photograph vehicles; conduct a telephone or personal interview with the involved individuals or surrogate; and obtain and record injury information received from various medical data sources. NASS CDS data are used to describe and analyze circumstances, mechanisms, and consequences of high severity motor vehicle crashes in the United States. The collection of interview data aids in this effort.

Estimated Annual Burden: 5,807 hours.

Number of respondents: 13,500.

Issued on: March 18, 2009.

Marilena Amoni,

Associate Administrator, National Center for Statistics and Analysis.

[FR Doc. E9–6382 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107047–00]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–107047–00 (TD 8985), Hedging Transactions (1.1221–2).

DATES: Written comments should be received on or before May 26, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carolyn N. Brown at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Hedging Transactions.

OMB Number: 1545–1480.

Regulation Project Number: REG–107047–00.

Abstract: This regulation deals with the character and timing of gain or loss from certain hedging transactions entered into by members of a consolidated group of corporations. The regulation applies when one member of the group hedges its own risk, hedges the risk of another member, or enters into a risk-shifting transaction with another member. Also, this regulation clarifies the character of gain or loss from the sale or exchange of property that is a part of a business hedge. A taxpayer must identify the hedging transaction on its book and records before the close of the day on which the taxpayer enters into it and must also identify the item, items, or aggregate risk being hedged. The information will be used to verify that a taxpayer is properly reporting its business hedging transactions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 127,100.

Estimated Time per Respondent: 1 hour, 20 minutes.

Estimated Total Annual Burden Hours: 171,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–6362 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8811

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8811, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

DATES: Written comments should be received on or before May 26, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown, 202–622–6688, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

OMB Number: 1545–1099.

Form Number: 8811.

Abstract: Current regulations require real estate mortgage investment conduits (REMICs) to provide Forms 1099 to true holders of interests in these investment vehicles. Because of the complex computations required at each level and the potential number of nominees, the ultimate investor may not receive a Form 1099 and other information necessary to prepare their tax return in a timely fashion. Form 8811 collects information for publishing by the IRS so that brokers can contact REMICs to request the financial information and timely issue Forms 1099 to holders.

Current Actions: There are no changes being made to Form 8811 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,000.

Estimated Time per Response: 4 hr., 23 min.

Estimated Total Annual Burden Hours: 4,380.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–6363 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Information Reporting Program Advisory Committee (IRPAC); Nominations

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) requests nominations of individuals for selection to the Information Reporting Program Advisory Committee (IRPAC). Individuals may nominate themselves or be nominated by interested organizations. Nominations should describe and document the applicant's qualifications for membership. IRPAC is comprised of no more than 35 members. There are nine positions open for calendar year 2010. It is important that IRPAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on the applicant's qualifications as well as the taxpayer or stakeholder base he/she represents.

The IRPAC advises the IRS on information reporting issues of mutual concern to the private sector and the Federal government. The committee works with the IRS Commissioner and other IRS leadership to provide recommendations on a wide range of information reporting administration issues. Membership is balanced to include representation from the tax professional community, businesses, banks, insurance companies, state tax administration, colleges and universities, securities, payroll, foreign financial institutions and other industries.

DATES: Written nominations must be received on or before May 29, 2009.

ADDRESSES: Nominations should be sent to: Ms. Caryl Grant, National Public Liaison, CL:NPL:SRM, Room 7559 IR, 1111 Constitution Avenue, NW., Washington, DC 20224, Attn: IRPAC Nominations. Applications may also be submitted via fax to 202–622–8345. Application packages are available on the Tax Professional's Page of the IRS Web site at *http://www.irs.gov/taxpros/index.html.* Application packages may also be requested by telephone from National Public Liaison, 202–927–3641 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Ms. Caryl Grant at 202–927–3641 (not a toll-free number) or **Public_Liaison@irs.gov.*

SUPPLEMENTARY INFORMATION:

Established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989, the IRPAC works closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. Conveying the public's perception of IRS activities to the Commissioner, the IRPAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds to the Committee's activities.

The IRPAC members are nominated by the Commissioner with the concurrence of the Secretary of Treasury to serve a three-year term. Working groups address policies and administration issues specific to information reporting. Members are not paid for their services. However, travel expenses for working sessions, public meetings and orientation sessions, such as airfare, per diem, and transportation are reimbursed within prescribed federal travel limitations.

Receipt of applications will be acknowledged, and all individuals will be notified when selections have been made. In accordance with Department of Treasury Directive 21–03, a clearance process including, fingerprints, annual tax checks, a Federal Bureau of Investigation criminal check, and a practitioner check with the Office of Professional Responsibility will be conducted.

Equal opportunity practices will be followed for all appointments to the IRPAC in accordance with the Department of Treasury and IRS policies. To ensure that the IRPAC recommendations take into account the needs of the diverse groups served by the IRS, membership shall include, to the extent practicable, individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

Dated: March 17, 2009.

Mark Kirbabas,

Designated Federal Official, National Public Liaison.

[FR Doc. E9–6392 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 19, 2009.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, May 19, 2009, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6366 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, May 11, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, May 11, 2009, at 12:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1–888–912–1227 or 954–423–7979, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6395 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 19, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, May 19, 2009, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6359 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 4 Taxpayer Advocacy Panel (including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be

conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 28, 2009, Friday, May 29, 2009, and Saturday, May 30, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Thursday, May 28, 2009 from 1 p.m. to 5 p.m., Friday, May 29, 2009 from 8 a.m. to 5 p.m., and Saturday, May 30, 2009 from 8 a.m. to 12 p.m. Central Time in Milwaukee, WI. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6383 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 7, 2009, Friday, May 8, 2009, and Saturday, May 9, 2009.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Thursday, May 7, 2009 from 1 p.m. to 5 p.m., Friday, May 8, 2009 from 8 a.m. to 5 p.m., and Saturday, May 9, 2009 from 8 a.m. to 12 p.m. Central Time in Dallas, TX. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6386 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 20, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, May 20, 2009, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6355 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 21, 2009.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee will be held Thursday, May 21, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1–888–912–1227 or 954–423–7975, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 17, 2009.

Shawn F. Collins

Acting Director Taxpayer Advocacy Panel.

[FR Doc. E9–6356 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 14, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Multi-Lingual Initiatives Issue Committee will be held Thursday, May 14, 2009, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6357 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Friday, May 8, 2009 and Saturday, May 9, 2009.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718 488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Friday, May 8, 2009 from 8:30 a.m. to 4:30 p.m. and Saturday, May 9, 2009 from 8:30 a.m. to 12 p.m. Eastern Time in Atlanta, GA. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6358 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 26, 2009.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, May 26, 2009, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6360 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 28, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Issue Committee will be held Thursday, May 28, 2009, at 8:30 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please

contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6361 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 20, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, May 20, 2009, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6367 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 20, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or 404–338–7185.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, May 20, 2009, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or 404–338–7185 or write TAP Office, Stop 211–D, 401 West Peachtree Street, NW., Atlanta, GA, 30308–3520, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6371 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 6, 2009.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Issue Committee will be held Wednesday, May 6, 2009, at Noon, Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 17, 2009.

Shawn F. Collins,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E9–6381 Filed 3–23–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
March 24, 2009

Part II

Federal Reserve System

12 CFR Part 226

Regulation Z; Docket No. R–1353; Truth in Lending; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 226

Regulation Z; Docket No. R–1353; Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Board proposes to amend Regulation Z, which implements the Truth in Lending Act (TILA) following the passage of the Higher Education Opportunity Act (HEOA). Title X of the HEOA amends TILA by adding disclosure and timing requirements that apply to creditors making private education loans, which are defined as loans made expressly for postsecondary educational expenses, but excluding open-end credit, real estate-secured loans, and loans made, insured, or guaranteed by the Federal government under title IV of the Higher Education Act of 1965. The HEOA also amends TILA by adding limitations on certain practices by creditors, including limitations on ''co-branding'' their products with educational institutions in the marketing of private student loans. The proposal requires that creditors obtain a self-certification form signed by the consumer before consummating the loan. It also requires creditors with preferred lender arrangements with educational institutions to provide certain information to those institutions.

DATES: Comments must be received on or before May 26, 2009.

ADDRESSES: You may submit comments, identified by Docket No. R–1353, by any of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Brent Lattin, Senior Attorney; Mandie Aubrey, or Lorna Neill, Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: For the provisions of the HEOA that would be implemented by this proposal, the Board is required to issue final regulations under Regulation Z by August 14, 2009. The HEOA also requires the Board to issue model forms based on consumer testing and in consultation with the Department of Education.

I. Background

A. Current Regulation Z Student Loan Disclosure Requirements

Congress enacted the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, to regulate certain credit practices and promote the informed use of consumer credit by requiring uniform disclosures about its costs and terms. Under TILA section 128, creditors must provide TILA disclosures to consumers in writing before consummation of certain closed-end credit transactions. Extensions of consumer credit over $25,000 are exempt from TILA with the exceptions of credit secured by real property, and, following enactment of the HEOA, private education loans. Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) are also exempt from TILA.

TILA mandates that the Board prescribe regulations to carry out the purposes of the statute. 15 U.S.C. 1604(a). Accordingly, the Board has promulgated Regulation Z, 12 CFR part 226. An Official Staff Commentary, 12 CFR 226 (Supp. I) interprets the requirements of the regulation and provides guidance to creditors in applying the rules to specific transactions.

To implement TILA section 128, 15 U.S.C. 1638, Regulation Z requires disclosures for certain closed-end loans, including for education loans that are not exempt federal education loans. Sections 226.17 and 226.18 require a creditor to provide the consumer with clear and conspicuous disclosures before consummation of the transaction. Section 226.17(i) contains special rules for student credit plans which are education loans where the repayment amount and schedule of payments are not known at the time that the credit is advanced. In such cases, creditors may make all the TILA cost disclosures at the time credit is extended based on the best information available at that time, and state clearly that the disclosures are estimates. Alternatively, creditors may provide partial disclosures at the time the credit is extended and later provide a complete set of disclosures when the repayment schedule for the loan is established.

B. The Higher Education Opportunity Act of 2008

On August 14, 2008, the Higher Education Opportunity Act of 2008 (HEOA) was enacted. Title X of the HEOA, entitled the ''Private Student Loan Transparency and Improvement Act of 2008,'' adds new subsection 128(e) and section 140 to TILA. These TILA amendments add disclosure requirements and prohibit certain practices for creditors making ''private education loans,'' defined as loans made expressly for postsecondary educational expenses, but excluding open-end credit, real estate-secured loans, and federal loans under title IV of the Higher Education Act of 1965. The HEOA also amends TILA section 104(3) to expressly cover private education loans over $25,000.

1. Overview of the HEOA's Amendments to TILA

Substantive Restrictions. The HEOA prohibits a creditor from using in its marketing materials a covered educational institution's name, logo, mascot, or other words or symbols readily identified with the educational institution, to imply that the educational institution endorses the loans offered by the creditor.[1] With

[1] The HEOA adds a new section 140 to TILA that includes other restrictions regarding private education loans. The Board is only required to issue regulations to implement subsection (c) of TILA section 140, the prohibition on co-branding. The other subsections of section 140 became effective when the HEOA was enacted and the Board is not proposing to issue regulations to implement them at this time. The other subsections of TILA Section 140 prohibit creditors from giving gifts to educational institutions or their employees, and prohibit revenue sharing between creditors and educational institutions. In addition, they restrict creditor payments to financial aid officials who serve on creditors' advisory boards, and require disclosure of any payments made to financial aid

respect to private education loans, the HEOA also amends TILA in the following ways:

• Creditors must give the consumer 30 days after a private education loan application is approved to decide whether to accept the loan offered. During that time, the creditor may not change the rates or terms of the loan offered, except for rate changes based on changes in the index used for rate adjustments on the loan.

• The consumer has a right to cancel the loan for up to three business days after consummation. Creditors are prohibited from disbursing funds until the three-day rescission period has run.

Disclosure Requirements. The HEOA adds a number of new disclosures for private education loans, which must be given at different times in the loan origination process. Specifically, the HEOA's amendments to TILA require the following disclosures for private education loans:

• *Disclosures with applications (or solicitations that require no application).* Creditors must provide general information about loan rates, fees, and terms, including an example of the total cost of a loan based on the maximum interest rate the creditor can charge. These disclosures must inform a prospective borrower of, among other things, the potential availability of federal student loans and the interest rates on those loans, and that additional information about federal loans may be obtained from the school or the Department of Education Web site.

• *Disclosures when the loan is approved.* When the creditor approves the consumer's application for a private education loan, the creditor must give the consumer a set of transaction-specific disclosures, including information about the rate, fees and other terms of the loan. The creditor must disclose, for example, estimates of the total repayment amount based on both the current interest rate and the maximum interest rate that may be charged. The creditor must also disclose the monthly payment at the maximum rate of interest.

• *Disclosures at consummation.* At consummation, the creditor must provide updated cost disclosures substantially similar to those provided at approval. The consumer's three-day right to cancel the transaction must also be disclosed.

Finally, once a consumer applies for a private education loan, the consumer must complete a ''self-certification form'' with information about the cost of attendance at the school that the student will attend or is attending. The form includes information about the availability of federal student loans, the student's cost of attendance at that school, the amount of any financial aid, and the amount the consumer can borrow to cover any gap. The creditor must obtain the signed and completed form before consummating the private education loan. The Department of Education has primary responsibility for developing the self-certification form in consultation with the Board.

2. Civil Liability

The HEOA amends TILA to provide a private right of action for several, but not all, of the disclosure requirements added by the HEOA. HEOA, Title X, Subtitle A, Section 1012 (amending TILA Section 130). The HEOA also amends TILA's statute of limitations for civil liability regarding private education loans. Currently TILA section 130(e) requires that an action be brought within one year of the date of the occurrence of the violation. Under the HEOA amendment, an action for a violation involving a private education loan must be brought within one year from the date on which the first regular payment of principal is due under the private education loan.

The HEOA provides a safe harbor for any creditor that elects to use a model form promulgated by the Board that accurately reflects the terms of the creditor's loans. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(5)(C)). Model forms are included in the proposal as amendments to Regulation Z's Appendix H. In addition, a creditor has no liability under TILA for failure to comply with the requirement that it receive the consumer's self-certification form before consummating a private education loan. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 130(j)).

C. Consumer Testing

In October 2008, the Board retained a research and consulting firm (Rockbridge Associates) and a design firm (EightShapes) to help the Board design the model forms required under the HEOA and to conduct consumer testing to determine the most effective presentation of the information required to be disclosed. Specifically, the Board used consumer testing to develop proposed model forms for the following:

• Information required to be disclosed on or with applications or solicitations for private education loans (Application and Solicitation Disclosure);

• Information required to be disclosed when a private education loan is approved (Approval Disclosure); and

• Information required to be disclosed after the consumer accepts a private education loan and at least three business days before loan funds are disbursed (Final Disclosure).

Initial forms design. In November 2008, the Board worked with Rockbridge Associates and EightShapes to develop sample disclosures to be used in the testing rounds, taking into account the specific requirements of the HEOA, information learned through the Board's outreach efforts, and Rockbridge Associate's experience in financial disclosure testing.

Cognitive interviews on model disclosures. In December 2008, Rockbridge Associates worked closely with the Board to conduct two rounds of consumer testing. Each round of testing comprised in-person cognitive interviews with 10 consumers. Both rounds of testing were conducted within the Washington, DC/Baltimore metropolitan area. The consumer participants included both college students and parents of college students, representing a range of ethnicities, ages, educational levels, and education loan experience.

The cognitive interviews consisted of one-on-one discussions with consumers, during which consumers were asked to view the sample Application and Solicitation Disclosure, the Approval Disclosure, and the Final Disclosure developed by the Board. The goals of these interviews were as follows: (1) To learn more about what information consumers are concerned about and actually read when they receive private education loan disclosures; (2) to determine how easily consumers can find various critical pieces of information in the disclosures; (3) to assess consumers' understanding of the information that the HEOA and § 226.18 require to be disclosed for private education loans, and of certain terminology related to private education loans; and (4) to determine the most clear and understandable way to disclose the required information to consumers.

After the first round of cognitive testing, the Board worked with Rockbridge Associates and EightShapes to revise the initial drafts of the model disclosures in response to findings from the first round of testing. Later in December 2008, the Board and Rockbridge Associates conducted a second round of testing in which 10 consumers were asked to review the revised sample Application and

officials for advisory board service expenses. Prepayment penalties or fees for early repayment are prohibited for private education loans.

Solicitation Disclosure, Approval Disclosure, and Final Disclosure.

Results of testing. A report summarizing the results of the testing is available on the Board's public Web site: *http://www.federalreserve.gov*.

Application and Solicitation Disclosure. Regarding the Application and Solicitation Disclosure, consumers expected to see a single rate that would apply to them and thus were initially confused by seeing the required disclosure of a range of initial rates that might apply to them. They also commonly mistook the rate disclosed as the high end of the range of initial rates with the maximum possible rate for the loan. For this reason, the proposed model form clarifies that the range of initial rates and the maximum possible rate are separate concepts.

Once consumers understood that the rates disclosed were not necessarily the actual rates that would apply to them, they consistently wanted to know how their actual rate would be determined. Thus, the model form places basic information about how the consumer's actual rate will be determined immediately adjacent to the range of initial rates.

Consumer testing also indicated that consumers want to see specific figures and dollar amounts for fees that may apply to their loan. Thus the proposal requires dollar amounts to be disclosed for each fee included on the form wherever possible.

In addition, testing showed that consumers found the sample total cost information to be useful in assessing the potential effect of a private education loan on their financial future. Improvements to the initial sample form tested included clarifying the loan term and the interest rates used in the sample cost estimates.

Finally, consumers found the presentation of federal loan alternatives, ''Next Steps,'' and general eligibility requirements to be clear and understandable, and the information in these sections to be useful.

Approval Disclosure. Regarding the Approval Disclosure, testing indicated that consumers are most concerned about the rate and loan costs, and that the traditional TILA box style of presenting the key elements of a loan is effective even with novice consumers. In initial drafts of the proposed model form, consumers did not understand explanations of the difference between the interest rate and the annual percentage rate (APR).

Testing also showed that consumers generally do not understand detailed explanations of how their variable rate changes based on a publicly available index. For consumers, the most important information regarding how the rate changes was simply that the creditor may not change the rate at will, and instead generally can do so only based on market factors out of the creditor's control.

Again, testing indicated that consumers strongly prefer to have all fees disclosed with specific dollar amounts.

Consumers considered the monthly payment schedule and amounts to be critical information in understanding the financial implications of obtaining a private education loan. For this reason, the Board revised initial drafts of the model disclosure to clarify the monthly payment schedule and amounts under various payment deferral scenarios.

As with the Application and Solicitation Disclosure, consumers found the presentation of federal loan alternatives and ''Next Steps'' to be clear and understandable, and the information in these sections to be useful.

Final Disclosure. Regarding the Final Disclosure, the information required to be disclosed under the HEOA is identical to that required on the Approval Disclosure, except for the right to cancel notice. Recognizing the importance of the right to cancel notice for consumers, the Board revised initial versions of the sample Final Disclosure to disclose the right to cancel information as clearly and prominently as possible. Consumers tested immediately saw and read the information in the proposed right to cancel notice. The proposed form also reflects revisions made to address consumer questions about the procedure for exercising this right.

Results from both rounds of testing were that consumers do not find the information about federal loan alternatives to be useful at this stage in the private education loan origination process. Consumers stated that this information is redundant; they have already been told about these options two times (on the Application and Solicitation Disclosure and the Approval Disclosure) and have already decided at this point to obtain a private education loan. For these reasons, as discussed in the section-by-section analysis under § 226.39(b)(3), the Board is proposing to use its exception authority under TILA section 105(a) to omit information about federal loan alternatives from the proposed Final Disclosure form.

Additional testing during and after comment period. During the comment period and after receiving comments from the public on the proposal and model disclosure forms, the Board will work with Rockbridge Associates and EightShapes to revise the model disclosures and conduct additional rounds of cognitive interviews to test the revised disclosures. Final model disclosures will be based on public comments and results of the additional consumer testing.

II. The Board's Rulemaking Authority

The Board has authority under the HEOA to issue regulations to implement paragraphs (1), (2), (3), (4), (6), (7), and (8) of new TILA section 128(e), and to implement section 140(c) of new TILA section 140. HEOA, Title X, Section 1002. In addition to implementing the specific disclosure requirements in TILA section 128(e), the Board has authority under TILA sections 128(e)(1)(R), 128(e)(2)(P), and 128(e)(4)(B) to require disclosure of such other information as is necessary or appropriate for consumers to make informed borrowing decisions. 15 U.S.C. 1638(e)(1)(R), 15 U.S.C. 1638(e)(2)(P), 15 U.S.C. 1638(e)(4)(B).

TILA section 128(e)(9) provides that, in issuing regulations to implement the disclosure requirements under TILA section 128(e), the Board is to prevent duplicative disclosure requirements for creditors that are otherwise required to make disclosures under TILA. However, if the disclosure requirements of section 128(e) differ or conflict with the disclosure requirements elsewhere under TILA, the requirements of section 128(e) are controlling. 15 U.S.C. 1638(e)(9).

TILA also mandates that the Board prescribe regulations to carry out the purposes of the act. TILA also specifically authorizes the Board, among other things, to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the Board's judgment are necessary or proper to effectuate the purposes of TILA, facilitate compliance with the act, or prevent circumvention or evasion. 15 U.S.C. 1604(a).

TILA also specifically authorizes the Board to exempt from all or part of TILA any class of transactions if the Board determines that TILA coverage does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board must consider factors identified in the act and publish its rationale at the time it proposes an exemption for comment. In proposing exemptions, the Board considered (1) the amount of the loan and whether the disclosure provides a benefit to consumers who are parties to

the transaction involving a loan of such amount; (2) the extent to which the requirement complicates, hinders, or makes more expensive the credit process; (3) the status of the borrower, including any related financial arrangements of the borrower, the financial sophistication of the borrower relative to the type of transaction, and the importance to the borrower of the credit, related supporting property, and coverage under TILA; (4) whether the loan is secured by the principal residence of the borrower; and (5) whether the exemption would undermine the goal of consumer protection. 15 U.S.C. 1604(f). The rationales for these proposed exemptions are explained below.

III. Section-by-Section Analysis

Introduction

The Board proposes to add the following new disclosure requirements to Regulation Z for private education loans:

(i) Disclosures with applications (or solicitations that require no application) in proposed § 226.38(a);

(ii) Disclosures when notice of loan approval is provided in proposed § 226.38(b); and

(iii) Disclosures before loan disbursement in proposed § 226.38(c).

General rules applicable to the new disclosure requirements are detailed in proposed § 226.37 and associated commentary. Model forms for these disclosures are proposed to be added to Regulation Z's Appendix H.

To implement TILA's new prohibition on co-branding, proposed § 226.39 would amend Regulation Z to prohibit a creditor from using in its marketing a covered educational institution's name, logo, mascot, or other words or symbols readily identified with the institution, to imply that the institution endorses the loans offered by the creditor. The proposal would make an exception to this prohibition under the Board's TILA section 105(a) authority, for creditors in ''preferred lender arrangements'' with covered educational institutions. Proposed § 226.39 would also: provide the consumer with 30 days following receipt of the approval disclosures to accept the loan and prohibit certain changes to a loan's rate or terms during that time; provide the consumer a right to cancel the loan for three business days after receipt of the final disclosures and prohibit disbursement during that time; require creditors to obtain a completed self-certification form signed by the consumer before consummating the transaction; and require creditors with preferred lender arrangements to provide certain information to educational institutions.

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement, and Liability

Section 226.1(b) describes the purposes of Regulation Z. The Board proposes to amend § 226.1(b) to refer to the new provisions for private education loans.

Section 226.1(d) provides an outline of Regulation Z. Proposed paragraph (d)(6) would reference the proposed addition of a new Subpart F containing rules relating to private education loans.

Section 226.2—Definitions and Rules of Construction

Currently, § 226.2(a)(6) contains two definitions of ''business day.'' Under the general definition, a ''business day'' is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for some purposes a more precise definition applies; ''business day'' means all calendar days except Sundays and specified federal legal public holidays, for purposes of §§ 226.15(e), 226.19(a)(1)(ii), 226.23(a), and 226.31(c)(1) and (2). The Board also recently proposed adopting the more precise definition for purposes of the presumption in proposed § 226.19(a)(2) that consumers receive corrected disclosures three business days after they are mailed. (*See* 73 FR 74,989; Dec. 10, 2008). As discussed more fully below in the section-by-section analysis under §§ 226.37, 226.38 and 226.39, the Board is proposing to use the more precise definition of business day in providing presumptions of when consumers receive mailed disclosures, and for measuring the period during which consumers have a right to cancel a private education loan.

Section 226.3—Exempt Transactions

TILA section 104(3) (15 U.S.C. 1603(3)) exempts from coverage credit transactions in which the total amount financed exceeds $25,000, unless the loan is secured by real property or a consumer's principal dwelling. The HEOA amends TILA section 104(3) to provide that private education loans over $25,000 are not exempt from TILA. The Board proposes to revise § 226.3(b) to reflect this change. The Board is not proposing changes to § 226.3(f) because the HEOA does not affect TILA's exclusion of loans made, insured, or guaranteed under title IV of the Higher Education Act of 1965. 15 U.S.C. § 1603(7). However, the Board is proposing to revise comment 3(f)–1 to remove the list of federal education loans covered by the exemption because it is outdated, and to clarify that private education loans are not exempt.

Section 226.17—General Disclosure Requirements

Proposed §§ 226.38(b) and (c) would require creditors to provide the current § 226.18 disclosures for private education loans in addition to the new disclosures. Consequently, the Board is proposing to revise § 226.17 to clarify that the format and timing rules for private education loans differ slightly from the rules for other types of closed-end credit. In addition, the Board is proposing to remove the special rules for student credit plans.

Current § 226.17(a)(1) requires that the closed-end credit disclosures under § 226.18 be grouped together, segregated from everything else, and not contain any information not directly related to the disclosures required under § 226.18. It also requires that the itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures required under that section. The Board is proposing to revise § 226.17(a)(1) and comment 17(a)(1)–4 to clarify that the information required under § 226.38 must be provided together with the information required under § 226.18. In addition, as discussed in the section-by-section analysis under § 226.38, the Board is proposing to allow creditors to provide the itemization of the amount financed together with the disclosures required under § 226.18 for private education loan disclosures.

Annual percentage rate disclosure. Current § 226.17(a)(2), implementing TILA section 122(a), requires the terms ''finance charge'' and ''annual percentage rate,'' together with a corresponding amount or percentage rate, to be more conspicuous than any other disclosure, except the creditor's identity under § 226.18(a). For private education loans, TILA sections 128(e)(2)(A) and 128(e)(4)(A) require a disclosure of the interest rate in addition to the APR. Consumer testing of student loan disclosures has shown that consumers often do not understand the APR and incorrectly believe that the APR is the consumer's interest rate. When the APR is presented prominently along with a less prominent disclosure of the interest rate, consumers experience added confusion. In consumer testing of the proposed model forms with a prominent APR and less prominent interest rate, some consumers believed that either the APR or the interest rate was a mistake and indicated a concern about trusting the accuracy of the disclosures. In addition,

TILA section 128(e)(1)(A) requires a disclosure of the range of potential interest rates in the application and solicitation disclosure. Some consumers expressed confusion as to why the APR on the approval and final forms was inconsistent with the interest rate disclosed on the application form. Consumers tested have indicated that the interest rate is most relevant to them for private education loan purposes.

The Board proposes to exercise its authority under TILA section 105(a) to except private education loans from the requirement that the APR be more prominent than other disclosures. For the reasons discussed above, the Board believes that such an exception is necessary and proper to assure a meaningful disclosure of credit terms for consumers. In addition, TILA section 128(e)(9), as added by the HEOA, directs the Board to implement the HEOA's requirements even if those requirements differ from or conflict with requirements under other parts of TILA. The interest rate and APR disclosures differ from each other and the difference impairs consumers' understanding of the rate that applies to the private education loan. Thus, the Board is proposing to give prominence to the interest rate disclosure that is required by the HEOA.

The Board also proposes to exercise its authority under TILA section 122(a) to require that the interest rate be disclosed as prominently as the finance charge. *See* proposed § 226.37(c)(2)(iii). The Board believes that in the context of private education loan disclosures where both the APR and the interest rate must be disclosed, consumers will be better able to avoid the uniformed use of credit if the interest rate is made more prominent and the APR made less prominent.

The Board requests comment on whether the interest rate should be made more prominent and whether the APR should be made less prominent for private education loan disclosures. Specifically, the Board requests comment on the effect a less prominent APR may have on loan terms. For example, the Board requests comment on whether a less prominent APR may promote the use of low, introductory ''teaser'' interest rates on private education loans, the use of alternative interest calculation methods, or the imposition of higher fees. The Board also requests comment on alternatives ways to disclose both the APR and the interest rate for private education loans in a manner that is clear to consumers.

Timing of disclosures. Current § 226.17(b) requires creditors to make closed-end credit disclosures before consummation of the transaction. As discussed more fully below in the section-by-section analysis under §§ 226.37 and 226.38, creditors would be required to make the current closed-end disclosures two times for private education loans: once with any notice of approval of a private education loan, and again before disbursement. Under current comment 17(b)–1, the disclosures must be made before consummation, but need not be given by a particular time, except in certain dwelling-secured transactions. The Board proposes to revise § 226.17(b) comment 17(b)–1 to clarify that more specific timing rules would apply for private education loans.

Under current § 226.17(i) and accompanying commentary, Regulation Z applies special disclosure rules to closed-end student loans that are ''student credit plans.'' The commentary to Regulation Z describes a ''student credit plan'' as an extension of credit for educational purposes, where the repayment amount and schedule are not known at the time credit is advanced. The plans include loans made under any student credit plan not otherwise exempt from TILA, whether government or private. Comment 17(i)–1. The credit extended before the repayment period begins under these plans is referred to as the interim student credit extension. The Board understands that most or all private education loans made today are ''student credit plans.''

For student credit plan loans, special disclosure rules apply when interim credit is extended, at the time that the creditor and consumer agree to a repayment schedule, and when a student credit plan loan is consolidated. Specifically, the creditor need not make the following closed-end loan disclosures at the time that interim credit is extended:

- Finance charge
- Payment schedule
- Total of payments

The TILA disclosures provided at the time of execution of the interim note must show two APRs, one for the interim period and one for the repayment period. *See* comment 17(i)–2. Creditors must make complete closed-end TILA disclosures at the time the creditor and consumer agree on a repayment schedule for the total obligation. At that time, a new set of full TILA disclosures must be provided. Finally, new disclosures must be given when interim student credit extensions are consolidated through a renewal note with a set repayment schedule. *See* comment 17(i)–3.

The Board proposes to eliminate the special rules for student credit plans under § 226.17(i) and accompanying commentary because the new TILA section 128(e) disclosure rules effectively eliminate the disclosure exemptions afforded by § 226.17(i). Implementing new TILA section 128(e)(2)(H), proposed § 226.38(b)(3)(vii) requires the creditor to give the consumer an estimate of the total amount for repayment at the time that the loan is approved. As discussed further below, the Board views the total amount for repayment disclosure as duplicative of TILA's existing total of payments disclosure. Proposed § 226.38(b)(3)(vii) would require creditors to disclose the total of payments before a definitive repayment schedule is set. Thus, the HEOA revisions to TILA eliminate the § 226.17(i) exemption for disclosure of the total of payments. This also has the effect of eliminating the other exemptions as well, because an estimate of the total of payments requires the creditor to estimate the finance charge and payment schedule.

In addition, the new private education loan disclosure regime applies to consolidation loans, rendering the commentary on consolidation loan disclosures under comment 17(i)–3 unnecessary. Finally, the Board believes that retaining two different disclosure regimes from which creditors may choose, in addition to the significant new disclosure requirements, is unnecessarily complex and may not be useful to consumers and creditors.

Under current comment 17(i)–1, creditors who choose not to make complete disclosures at the time the credit is extended must make a new set of complete disclosures at the time the creditor and consumer agree upon a repayment schedule for the total obligation. The HEOA does not require, and the Board is not proposing to require, creditors to give a new set of disclosures once the creditor and consumer agree upon a repayment schedule. The proposed rules would require a complete disclosure at the time the credit is extended. In addition, new disclosures are required under § 226.20(a) in the case of a refinancing of a loan. The Board will consider whether disclosures should be required for subsequent events as part of its comprehensive review of closed-end credit disclosures under Regulation Z.

Section 226.18—Content of Disclosures

As discussed more fully below, the Board is proposing to require that creditors provide the disclosures required in § 226.18 along with the disclosures required with notice of approval in § 226.38(b) and with the

final disclosures required in § 226.38(c). The proposed model forms in Appendix H–19 and H–20 show the disclosures required under § 226.18 as well as the disclosures required under §§ 226.38(b) and (c). However, as explained below, the HEOA's disclosure about limitations on interest rate adjustments differs slightly from that of § 226.18(f)(1)(ii), as interpreted in comment 18(f)(1)(ii)–1. Thus the Board is proposing to revise comment 18(f)(1)(ii)–1 to clarify that parts of the comment do not apply to private education loans.

Current § 226.18(f)(1)(ii) requires that if the annual percentage rate in a closed-end credit transaction not secured by the consumer's principal dwelling may increase after consummation, the creditor must disclose, among other things, any limitations on the increase. Current comment 18(f)(1)(ii)–1 states that when there are no limitations, the creditor may, but need not, disclose that fact. By contrast, the HEOA and proposed §§ 226.38(b) and (c) require creditors to disclose any limitations on interest rate adjustments, or the lack thereof. Thus, for private education loans, disclosure of the absence of any limitations on interest rate adjustments is required, not optional. In addition, under §§ 226.38(b)(1)(ii), and (c)(1)(i), limitations on rate increases include, rather than exclude, legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations. Proposed comment 38(b)(1)–2, discussed below, would provide guidance on how creditors are to disclose limitations on interest rate adjustments.

The Board is also proposing to revise comment 18(f)(1)(iv)–2, which currently clarifies that for interim student credit extensions creditors need not provide a hypothetical example of the payment terms that would result from an increase in the variable rate. The comment would be revised to replace the reference to interim student credit extensions with a reference to private education loans. Proposed §§ 226.38(b)(3)(viii) and 226.38(c)(3) would require a disclosure of the maximum monthly payment on a private education loan based on the maximum possible rate of interest. As discussed more fully in the section-by-section analysis in § 226.38, the Board believes that the required disclosure of the maximum monthly payment amount at the maximum rate satisfies the requirement under § 226.18(f)(1)(iv) to disclose a hypothetical example of the payment terms resulting from an increase in the rate. Proposed comment 38(b)(1)–1 would clarify that while creditors must disclose the maximum payment at the maximum possible rate, they need not also disclose a separate example of the payment terms resulting from a rate increase under § 226.18(f)(1)(iv).

The Board is also proposing to revise comment 18(k)(1)–1 which currently clarifies that interim interest on a student loan is not considered a penalty for purposes of the requirement in § 226.18(k)(1) to disclose whether or not a penalty may be imposed if a loan is prepaid in full. The proposal would remove the reference to interim interest on a student loan as an example of what is not a penalty. The Board does not intend to indicate that interim interest on a student loan is considered a penalty. Rather, with the proposed removal of § 226.17(i) and associated commentary, the reference to interim interest on a student loan would no longer be clear. The Board believes that the description of what constitutes a penalty in the remainder of revised comment 18(k)(1)–1 would provide sufficient clarity that interim interest on a student loan would not be considered a penalty.

Subpart F

The Board proposes to add a new Subpart F to contain the rules relating to private education loans.

Section 226.37—Special Disclosure Requirements for Private Education Loans

Proposed § 226.37 contains general rules about the disclosure and other requirements contained in Subpart F. Section 226.37(a) would specify that Subpart F would apply only to private education loans. Paragraph 37(a)(1) would clarify that, except where specifically provided otherwise, the requirements and limitations of Subpart F would be in addition to the requirements of the other subparts of Regulation Z.

37(b) Definitions

The HEOA amends TILA by adding a number of defined terms in new TILA sections 140 and 128(e). The Board proposes to add these definitions to Regulation Z in proposed § 226.37(b). However, for one new defined term, ''private educational lender,'' the Board proposes to use Regulation Z's existing definition of ''creditor'' (12 CFR 226.2(a)(17)). The HEOA defines the term ''private educational lender'' as a financial institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), or a federal credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) that solicits, makes, or extends private education loans.[2] The term also includes any other person engaged in the business of soliciting, making, or extending private education loans. The Board believes that the ''creditor'' definition would encompass persons ''engaged in the business of'' extending private education loans.[3] The term ''creditor'' applies to a person who regularly extends consumer credit, which is defined as credit extended more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. 12 CFR 226.2(a)(17).

Under the HEOA, a depository institution or federal credit union would be covered for any private education loan it makes, regardless of whether or not the institution regularly extended consumer credit. By applying the private education loan rules only to ''creditors,'' the Board is proposing to create an exception for depository institutions and federal credit unions that do not regularly extend consumer credit. Under TILA section 105(a), the Board may provide exceptions to TILA for any class of transactions to facilitate compliance with TILA. The Board believes that in most cases depository institutions and credit unions that extend private education loans would also be creditors under Regulation Z. However, there may be a few instances where an institution that does not regularly extend consumer credit nevertheless makes an occasional private education loan. For such institutions, the compliance burden would appear to be significant for the small number of student loans that they may extend while still providing consumers with credit disclosures in a manner consist with TILA and the Board's interpretation thereof. The Board believes that this exception is necessary and proper to facilitate compliance with TILA.

The Board also proposes to exercise its authority under TILA section 105(f) by applying the private education loan rules only to ''creditors,'' as defined in Regulation Z, thereby exempting from the requirements of HEOA depository institutions and federal credit unions that do not regularly extend consumer

[2] The term ''financial institution'' is not defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), but the Board interprets this term to refer to the defined term ''depository institution,'' which is the most comprehensive definition in section 3 of the Federal Deposit Insurance Act.

[3] The HEOA also covers persons engaged in the business of soliciting private education loans. Under proposed § 226.37(d)(1) the term solicitation would be defined as an offer to extend credit that does not require the consumer to complete an application. The term ''solicit'' would not include general advertising or invitations to apply for credit.

credit. The Board understands that the private education loan population contains students who may lack financial sophistication, and that the amount of the loan may be large and the loan itself may be important to the borrower. The Board believes, however, that because the number of instances where a consumer would receive a private education loan from an institution that does not regularly extend consumer credit is very limited, the burden and expenses of compliance that would be assumed by the institution are not outweighed by the benefit to the consumer. Furthermore, the Board believes that the goal of consumer protection would not be undermined by this exemption and that, after considering the 105(f) factors, coverage would not provide a meaningful benefit to consumers in the form of useful protection.

The Board requests comment on whether depository institutions and credit unions should be covered even if they do not meet the definition of ''creditor.'' The Board also requests comment on whether there are other persons engaged in the business of extending private education loans who would not be creditors under Regulation Z.

37(b)(1) Covered Educational Institution

The HEOA defines the term ''covered educational institution'' to mean any educational institution that offers a postsecondary educational degree, certificate, or program of study (including any institution of higher education) and includes an agent, officer, or employee of the educational institution. Included in the definition of covered educational institution are ''institutions of higher education,'' as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002). The Higher Education Act of 1965 contains two definitions of the term ''institution of higher education;'' a narrower definition in section 101, and a broader definition in section 102. *See* 20 U.S.C. 1001, 1002. The HEOA explicitly uses the broader definition in section 102 of the Higher Education Act of 1965. HEOA Title X, Section 1001 (adding TILA Section 140(a)(3)). The more expansive definition of institution of higher education, as interpreted by the Department of Education's regulations (34 CFR 600), appears broad enough to encompass most educational institutions that offer postsecondary educational degrees, certificates, or programs of study. The definition of institution of higher education under section 1002 of the Higher Education Act of 1965, however, would not include certain unaccredited educational institutions that offer postsecondary educational degrees, certificates, or programs of study. The HEOA's definition of ''covered educational institution'' appears to be broader than the definition of ''institution of higher education'' because the former includes, but is not limited to, the latter. For this reason, proposed § 226.37(b)(1) would define ''covered educational institution'' as an educational institution (as well as an agent, officer or employee of the institution) that would meet the definition of an institution of higher education as defined in § 226.37(b)(2), without regard to the institution's accreditation status. Proposed comment 37(b)(1)–1 would clarify that if an educational institution would not be considered an ''institution of higher education'' solely on account of the institution's lack of accreditation, the institution would be a ''covered educational institution.'' It would also clarify that a covered educational institution may include, for example, a private university or a public community college. It may also include an institution, whether accredited or unaccredited, that offers instruction to prepare students for gainful employment in a recognized profession such as flying, culinary arts, or dental assistance. A covered educational institution would not include elementary or secondary schools.

Although the definition of ''covered educational institution'' under the Title X of the HEOA includes an agent, officer or employee of a covered educational institution, the term ''agent'' is not explicitly defined in that section of the HEOA. However, section 151 of the HEOA defines an ''agent'' as an officer or employee of a covered institution or an institution-affiliated organization and excluding any creditor regarding any private education loan made by the creditor. Proposed comment 37(b)(1)–2 would clarify that an ''agent'' for the purposes of defining a covered educational institution is an officer or employee of an institution affiliated organization.

The Board requests comment on whether there are postsecondary educational institutions not covered by the definition of institution of higher education, other than unaccredited institutions, that should be included in the definition of covered educational institution.

37(b)(2) Institution of Higher Education

The HEOA defines the term ''institution of higher education'' to have the same meaning as in section 1002 of the Higher Education Act of 1965 (20 U.S.C. 1002). Proposed § 226.37(b)(2) would define ''institution of higher education'' with reference to the Higher Education Act of 1965 and to the implementing regulations promulgated by the Department of Education. The definition would encompass, among other institutions, colleges and universities, proprietary educational institutions and vocational educational institutions.

37(b)(3) Postsecondary Educational Expenses

The HEOA defines ''postsecondary educational expenses'' as any of the expenses that are listed as part of the cost of attendance of a student under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll). Proposed § 226.37(b)(3) would adopt this definition and provide illustrative examples of postsecondary educational expenses. Examples include tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance. Proposed comment 37(b)(3)–1 would clarify that the examples in the rule are not exhaustive.

37(b)(4) Preferred Lender Arrangement

The HEOA defines ''preferred lender arrangement'' as having the same meaning as in section 151 of the Higher Education Act of 1965 (20 U.S.C 1019). Proposed § 226.37(b)(4) would adopt this definition and proposed comment 37(b)(4)–1 would clarify that the term refers to an arrangement or agreement between a creditor and a covered educational institution under which a creditor provides education loans to consumers for students attending the covered educational institution and the covered educational institution recommends, promotes, or endorses the private education loan products of the creditor. It does not include arrangements or agreements with respect to Federal Direct Stafford/Ford loans, or Federal PLUS loans made under the Federal PLUS auction pilot program.

37(b)(5) Private Education Loan

Proposed § 226.37(b)(5) would implement the HEOA's definition of a ''private education loan.'' A private education loan would be a loan that is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) and is extended expressly, in whole or in part,

for postsecondary educational expenses to a consumer, regardless of whether the loan is provided through the educational institution that the student attends. A private education loan would exclude an open-end credit plan. It would also exclude any closed-end loan secured by real property or a dwelling.

Comment 37(b)(5)–1 would clarify that a loan made ''expressly for'' postsecondary educational expenses would include loans issued explicitly for expenses incurred while a student is enrolled in a covered educational institution. It would also cover loans issued to consolidate a consumer's pre-existing private education loans.

Comment 37(b)(5)–2 would address loans, other than open-end credit or any loan secured by real property or a dwelling, that a consumer may use for multiple purposes, including postsecondary education expenses. Creditors extending such loans, may, at the creditor's option, provide the disclosures under § 226.38(a) on or with an application or solicitation. However, under proposed § 226.37(d)(2)(C), the Board would exercise its authority under TILA section 105(a) and except multi-purpose loans, from the application disclosure requirements of § 226.38(a). As explained below, the Board believes that this exception is necessary and proper to effectuate the purposes of and facilitate compliance with TILA.

The Board also proposes to exercise its authority under TILA section 105(f) to exempt such loans from the § 226.38(a) disclosure requirements implementing TILA section 128(e)(1). The Board believes that these application and solicitation disclosure requirements do not provide a meaningful benefit to consumers in the form of useful information or protection for loans that may be used for multiple purposes. The Board considered that the private education loan population includes many students who may lack financial sophistication and the size of the loan could be relatively significant and important to the borrower. However, with respect to loans that may be used for multiple purposes, the creditor may not know at application if the consumer intends to use such loans for educational purposes. A requirement to provide a consumer with the proposed § 226.38(a) disclosures would likely be complicated and burdensome to creditors and potentially infeasible to implement. Furthermore, the Board believes that the borrower would receive meaningful information about the loan through the subsequent approval and final disclosures required under § 226.38(b) and (c), respectively. The HEOA also provides borrowers with significant rights, such as the right to cancel the loan. The Board recognizes that such multi-purpose loans would not be secured by the principal residence of the consumer, which is a factor for consideration under section 105(f). The Board believes that consumer protection would not be undermined by this exemption.

Proposed comment 37(b)(5)–2 clarifies that if the consumer expressly indicates on an application that the proceeds of the loan will be used to pay for postsecondary educational expenses, the creditor must comply with the disclosure requirements of §§ 226.38(b) (approval disclosures) and (c) (final disclosures) and § 226.39 (including the 30 day acceptance period and three-business-day right to cancel). To determine the purpose of the loan, proposed comment 37(b)(5)–2 would state that the creditor may rely on a check-box or purpose line on a loan application.

Proposed comment 37(b)(5)–2 would also clarify that the creditor must base the disclosures on the entire amount of the loan, even if only a part of the proceeds is intended for postsecondary educational expenses. The Board believes that this approach would be the least administratively burdensome for creditors and would also be clearer to consumers. Providing disclosures based on a partial loan amount might cause a consumer to misinterpret the correct amount of his or her loan obligation. Therefore, the Board would exercise its authority under TILA section 105(a) to require that the approval and final disclosure requirements of HEOA be applied to the portion of the loan that is not a private education loan. As explained above, the Board believes that this provision is necessary and appropriate to assure a meaningful disclosure of credit terms for consumers.

The Board requests comment on whether the private educational loan application disclosures should be required for loans that may be used for multiple purposes, or, alternatively, whether such loans should be excepted from any of the other disclosure requirements. The Board also requests comment on whether creditors who make loans that may be used for multiple purposes should be required to comply with the requirement to obtain a self-certification form under proposed § 226.39(e) and, if so, whether creditors should be required to obtain the self-certification form only from consumers who are students, or from all consumers, such as parents of a student.

37(c) Form of Disclosures

Similar to the requirements imposed by § 226.17 for the disclosures required by § 226.18, proposed § 226.37(c)(1) would require the disclosures for private student loans be made clearly and conspicuously. Under proposed § 226.37(c)(2), the approval and final disclosures under §§ 226.38(b) and (c) would be required to be in writing in a form that the consumer may keep. The disclosures would have to be grouped together, be segregated from everything else, and not contain any information not directly related to the disclosures required under §§ 226.38(b) and (c), which include the disclosures required under § 226.18. However, the disclosures could include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. In addition, the proposal would allow the following disclosures to be made together with or separately from other required disclosures: the creditor's identity under § 226.18(a), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

The proposal would also require the term ''finance charge'' and corresponding amount, when required to be disclosed under § 226.18(d), and the interest rate required to be disclosed under §§ 226.38(b)(1)(i) and (c)(1), to be more conspicuous than any other disclosure, except the creditor's identity under § 228.18(a). As discussed in the section-by-section analysis under § 226.17, the annual percentage rate would not be required to be more prominent than other terms.

Proposed comment 37(c)–1 clarifies that creditors may follow the rules in § 226.17 in complying with the requirement to provide the information required under § 226.18, as well as the requirement that the disclosures be grouped together and segregated from everything else. However, in contrast to § 226.17, the itemization of the amount financed under § 226.18(c)(1) need not be separate from the other disclosures. The HEOA requires creditors to disclose the principal amount of the loan. *See* proposed §§ 226.38(b)(3)(i) and 226.38(c)(3)(i). The Board proposes to allow creditors to provide the disclosure of the loan's principal amount as part of the itemization of the amount financed, if the creditor opts to provide an itemization. Consumers may be confused about the difference between the required disclosure of the amount financed (§ 226.18(b)) and the principal amount in cases where those two disclosures are different, and the Board

believes that providing an itemization may help clarify the distinction between the two terms.

Proposed § 226.37(c)(2) would permit creditors to make disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by § 226.38(a) could be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act on or with an application or solicitation provided in electronic form. In addition, the self-certification form required under § 226.39(e) could be obtained in electronic form subject to the requirements in that section. Proposed comment 37(c)(2)–1 would contain guidance on the manner in which disclosures could be provided in electronic form. Electronic disclosures would be deemed to be on or with an application or solicitation if they—(1) automatically appear on the screen when the application or solicitation reply form appears; (2) are located on the same Web ''page'' as the application or solicitation reply form and the application or reply form contains a clear and conspicuous reference to the location and content of the disclosures; or (3) are posted on a Web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form. This approach is consistent with the rules for electronic disclosures for credit and charge card applications under comment 5a(a)(2)–1.ii.

37(d) Timing of Disclosures

Proposed § 226.37(d) would contain the rules governing the timing of the proposed disclosures. Comment 37(d)–1 would clarify that disclosures are considered provided when received by the consumer. The comment contains additional guidance specifying that if the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed. For purposes of §§ 226.37, 226.38, and 226.39, the term ''business day'' would have the more precise definition used for rescission and other purposes, meaning all calendar days except Sundays and the federal holidays referred to in § 226.2(a)(6). For example, if the creditor were to place the disclosures in the mail on Thursday, June 4, the disclosures would be considered received on Monday, June 8.

Application disclosures. The HEOA requires creditors to provide disclosures in an application or in a solicitation that does not require the consumer to complete an application. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA section 128(e)(1)). Proposed § 226.37(d)(1) would implement this requirement. The Board proposes that creditors may provide the disclosures on or with the application or solicitation because the disclosures are likely to be longer than a single page. The proposed regulation would also define the term ''solicitation'' to mean an offer of credit that does not require the consumer to complete an application. A ''solicitation'' would also include a ''firm offer of credit'' as defined in the Fair Credit Reporting Act (FCRA). 15 U.S.C. 1681 *et seq.* Because consumers who receive ''firm offers of credit'' have been preapproved to receive credit and may be turned down only under limited circumstances, the Board believes that these preapproved offers are of the type intended to be captured as a ''solicitation,'' even though consumers are typically asked to provide some additional information in connection with accepting the offer. The proposed definition of ''solicitation'' would be similar to that contained in § 226.5a(a)(1) for credit and charge card application disclosures. Proposed comment 37(d)(1)–1 would provide additional guidance that invitations to apply for a private education loan would not be considered solicitations.

Proposed § 226.38(d)(1)()(ii) would deal with provision of disclosures in a telephone application, or solicitation, initiated by the creditor. The creditor would be allowed, but not required, to orally disclose the information in § 226.38(a). Alternatively, if the creditor does not disclose orally the information in § 226.38(a), the creditor would be required to provide or place in the mail the disclosures no later than three business days after the consumer requests the credit. The Board believes that orally disclosing to consumers all of the information in § 226.38(a), including rate and loan cost information, information about federal loan alternatives, and loan eligibility requirements, may make it difficult for consumers to comprehend and retain the information. However, the Board recognizes that creditors may sometimes be able to communicate approval of the consumer's application at the same time that the creditor would provide the application disclosures. Consumers may be confused by receiving both the application disclosures and the approval disclosures at the same time. Therefore, the Board would exercise its authority under TILA section 105(a) to create an exception from the requirement to provide the application disclosures under § 226.38(a) if the creditor does not provide oral application disclosures and does provide or place in the mail the approval disclosures in § 226.38(b) no later than three business days after the consumer requests the credit. As explained above, the Board believes that this exception is necessary and proper to assure a meaningful disclosure of credit terms for consumers.

The Board would also exercise its authority under TILA section 105(f) in proposing the exemption, described above, from the requirement to provide the application disclosures under § 226.38(a), as required by TILA section 128(e)(1). The Board believes that, as described above, the application disclosure requirements would not provide a meaningful benefit to consumers in the form of useful information or protection because they would also contemporaneously receive the approval disclosures which would provide the consumer with adequate information. Moreover, the Board thinks that receiving both the application and approval disclosures at the same time may complicate and hinder the credit process by causing consumer confusion. The Board understands that the private education loan population contains students who may lack financial sophistication, and that the amount of the loan may be large and the loan itself may be important to the consumer. The Board also notes that private education loans are not secured by the consumer's residence and that HEOA provides the consumer with the right to cancel the loan. Finally, in considering the last factor under section 105(f), the Board does not believe that the goal of consumer protection would be undermined by such an exemption.

As discussed above in the section-by-section analysis under § 226.37(b)(5), proposed § 226.37(d)(2)(C) would create an exception to the application disclosure requirement for a loan, other than open-end credit or any loan secured by real property or a dwelling, that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses.

The Board requests comment on alternatives to providing application disclosures in telephone applications or solicitations initiated by the creditor.

Approval disclosures. Proposed § 226.37(d)(2) would require that the disclosures specified in § 226.38(b) be provided before consummation on or with any notice to the consumer that the

creditor has approved the consumer's application for a loan. If the creditor communicates notice of approval to the consumer by mail, the disclosures would have to be mailed at the same time as the notice of approval. If the creditor provides notice of approval by telephone, the creditor would be required to place the disclosures in the mail within three business days of the notice of approval. If the creditor provides notice of approval in electronic form, the creditor would be allowed to provide the disclosures in electronic form if the creditor has complied with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*); otherwise, the creditor would be required place the disclosures in the mail within three business days. Comment 37(d)(2)–1 would clarify that for purposes of § 226.37(d), the more precise definition of business day (meaning all calendar days except Sundays and specified federal holidays) applies.

The HEOA requires that the disclosures be provided contemporaneously with loan approval. However, loan approval is an internal process of the creditor's and it often may not be feasible to provide the disclosures at the precise moment that the creditor approves the loan. The Board believes that by requiring the disclosures be provided at the time the creditor communicates approval to the consumer, the consumer will receive the information at the earliest opportunity contemporaneous with loan approval. In addition, the proposed rule provides creditors with certainty as to when the disclosure must be provided. The Board believes that creditors are likely to notify the consumer that the loan has been approved shortly after approval is granted because the creditor cannot consummate and disburse the loan until the consumer has received the required approval disclosures and accepted the loan.

The Board requests comment on alternative approaches to the timing of the approval disclosure.

Final disclosures. Proposed § 226.37(d)(3) would require final disclosures to be provided to the consumer after the consumer accepts the loan and at least three business days prior to disbursing the private education loan funds. The proposed timing of the final disclosure would differ slightly from the language used in the HEOA. For the reasons discussed below, the Board believes that creditors may not always be able to comply with the literal text of the HEOA, and that the Board's proposed timing rule would implement the purpose of the HEOA's final disclosure.

The HEOA requires a final disclosure contemporaneously with the consummation of a private education loan. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(4)). Regulation Z defines ''consummation'' as the time that a consumer becomes contractually obligated on a credit transaction. 12 CFR 226.2(a)(13). The corresponding staff commentary provides that applicable state law governs in determining when a consumer becomes contractually obligated.[4] The Board recognizes that states define when a consumer becomes contractually obligated in a variety of ways. The multiple state definitions could result in considerable confusion among creditors as to the required timing of the final disclosures. Under many current private education loan agreements, the consumer is not contractually obligated until funds are disbursed to the consumer. This would create a compliance problem for creditors making loans in these cases because, in addition to requiring delivery of the final disclosures contemporaneously with consummation, the HEOA forbids creditors from disbursing funds until three business days after the consumer receives the final disclosures. Thus, where the consumer is not contractually obligated until the funds are disbursed, creditors cannot comply with the literal language of the HEOA; a creditor cannot simultaneously provide a disclosure at the time of disbursement and not disburse funds until three business days after the disclosure is provided. The HEOA adds further complexity to determining when the consumer becomes contractually obligated because it requires creditors to provide an approval disclosure to the consumer and hold the terms open for 30 days for the consumer to accept. It is not clear how this process would effect various states' interpretations of when the consumer becomes contractually obligated. Thus, creditors may face considerable uncertainty as to when the required disclosures must be provided.

The Board proposes to interpret the phrase ''contemporaneously with consummation'' to mean the time after the consumer accepts the loan and at least three days before disbursement. The Board believes that the purpose of the final disclosure, and the consumer's three-business day right to cancel following receipt of that disclosure, is to ensure that consumers are given a final opportunity to evaluate their need for a private education loan after acceptance and before the funds are actually disbursed. The proposed rule would accomplish the statute's objectives while ensuring that creditors have reasonable certainty in complying with the rule's timing requirement.

The Board solicits comment on alternative approaches to the timing of the final disclosure that achieve the statutory purpose while ensuring that compliance is possible in all cases.

37(e) Basis of Disclosures and Use of Estimates

Proposed § 226.37(e) would require that the disclosures be based on the terms of the legal obligation between the parties and is similar to current § 226.17(e). If any information necessary for an accurate disclosure is unknown to creditor, the creditor would be required to make the disclosure based on the best information reasonably available at the time the disclosure is provided and to state clearly that the disclosure is an estimate. For example, the creditor may not know the exact date that repayment will begin at the time that credit is advanced to the consumer. The creditor would be permitted to estimate a repayment start date based on, for instance, an estimate of the consumer's graduation date.

37(f) Multiple Creditors; Multiple Consumers

Proposed § 226.37(f) would provide rules for disclosures where there are multiple creditors or consumers. If there are multiple creditors only one set of disclosures may be given and the creditors would be required to agree which creditor must comply. If there are multiple consumers, the creditor would be permitted to provide the disclosure to any consumer who is primarily liable on the obligation.

37(g) Effect of Subsequent Events

Under proposed § 226.37(g) and comment 37(g)–1, if an event that occurs after consummation renders the final disclosures under § 226.38(c) inaccurate, the inaccuracy would not be a violation of Regulation Z. For example, if the consumer initially chooses to defer payment of principal and interest while enrolled in an educational institution, but later chooses to make payments while enrolled, such a change would not make the original disclosures inaccurate. Creditors would still be prohibited by proposed § 226.39(c), discussed below,

[4] The comment states that when a contractual obligation on the consumer's part is created is a matter to be determined under applicable law; Regulation Z does not make this determination. Comment 2(a)(13)–1.

from changing the rate or terms of the loan before disbursement, except for changes to the rate based on changes in the index used to determine the rate.

Section 226.38—Content of Disclosures

Proposed § 226.38 establishes the content that a creditor would be required to include in its disclosures to a consumer at three different stages in the private education loan origination process: (1) On or with an application or a solicitation that does not require the consumer to complete an application, (2) with any notice of approval of the private education loan, and (3) at least three business days prior to disbursement of the loan funds.

Preventing Duplication of Existing TILA Disclosure Requirements

While adding a number of disclosure requirements for private education loans, the HEOA did not eliminate a creditor's obligation to provide consumers with the information required to be disclosed before consummation of any closed-end loan, in accordance with TILA sections 128(a) through (d). The HEOA requires the Board to prevent, to the extent possible, duplicative disclosure requirements for creditors making private education loans under TILA. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(9)). Where the disclosure requirements of section 128(e) differ or conflict with other disclosure requirements under TILA that apply to creditors, the requirements of section 128(e) are controlling. *Id.*

The new application and solicitation disclosures required under § 226.38(a) do not duplicate disclosures previously required under TILA because TILA does not require disclosures at the time of application or solicitation for closed-end credit. Under TILA sections 128(a) through (d), as implemented by §§ 226.17 and 226.18, closed-end loan disclosures are required to be provided only once, before consummation. For private education loans, however, the Board proposes to require the closed-end loan disclosures be provided twice—once when the loan is approved, and again with the final disclosures, in manner shown in the proposed model forms in Appendix H. Specifically, the Board proposes to require creditors to provide consumers the existing § 226.18 disclosures along with the new § 226.38(b) approval disclosures. The Board also proposes to require that the § 226.18 disclosures be provided along with the final disclosures required under new TILA section 128(e)(4) (implemented by proposed § 226.38(c), discussed below).

Under TILA sections 128(e)(2)(P) and 128(e)(4)(B), the Board has authority to add such other information as necessary or appropriate for consumers to make informed borrowing decisions. With respect to the application disclosures, the Board believes that combining the existing closed-end credit TILA disclosures with the new private education loan disclosures puts at the consumer's disposal the most relevant transaction-specific information at a point where the consumer is most likely to make the decision as to whether a particular private education loan meets the consumer's needs. Once the creditor communicates approval to the consumer, the consumer has the right to accept the loan terms at any time within 30 calendar days of the date the consumer receives the approval disclosures required under § 226.38(b). During this time, with a few exceptions, the creditor may not change the rate and terms of the loan. As a result, if the consumer accepts the loan within that 30-day period, the rate and terms of the loan approved will generally be the rate and terms of the loan ultimately made to the consumer. To make an informed decision during this deliberation period, the consumer would be best served by having the information required under §§ 226.17 and 226.18, as well as § 226.38(b).

In addition, consistent with the requirement in § 226.17 that creditors must provide closed-end disclosures before consummation of the credit transaction, proposed § 226.37(d)(2) would require that the approval disclosure be provided before consummation. Based on TILA's definition of ''consummation'' in § 226.2(a)(13), this means that the closed-end credit disclosures must be provided before the consumer becomes contractually obligated on the loan. State laws may vary as to when consummation occurs (*see* comment 2(a)(13)–1), but the Board believes that the time of approval is likely to precede the time at which the consumer becomes contractually obligated on a loan.

The Board believes that providing the § 226.18 disclosures a second time along with the final disclosures under § 226.38(c) would enhance consumer understanding by make it easier for consumers to compare the approval and final disclosures. By having two sets of disclosures that largely mirror each other, both in content and in form, consumers would be able to easily compare terms between the two sets of disclosures and likely would be better able to decide whether or not to exercise their right to cancel the loan. Moreover, relatively few disclosures could be removed from the final disclosure if the current TILA disclosures were not required, given the substantial overlap with the HEOA requirements. Thus, requiring uniformity would likely enhance consumer understanding by promoting uniformity without unduly burdening creditors. Indeed, it may be easier for creditors to provide two similar forms rather than two different forms, because a similar operational process could be used to produce and check both forms.

In combining the § 226.18 disclosures with the disclosures under §§ 226.38(b) and (c) in a model form, the Board proposes to retain many of the basic elements of the closed-end loan model form in existing Regulation Z Appendix H (*see* Appendix H–2). The proposed model forms are discussed further in the section-by-section analysis under Appendix H.

Graduated payment disclosure. TILA section 128(e)(2)(K) requires the creditor to disclose whether monthly payments are graduated. This disclosure would be implemented as part of the requirement that creditors provide the information under § 226.18. Specifically, the payment schedule disclosure under § 226.18(g) requires creditors to show whether the payments are graduated.

Other instances in which the Board proposes to merge specific § 226.18 disclosures with the disclosures in §§ 226.38(b) and (c) to avoid duplicative disclosures are discussed throughout this section-by-section analysis below.

General Disclosure Requirements

Proposed comment 38–1 would clarify that the disclosures required under § 226.38 need be provided only as applicable, except where specifically provided otherwise. For example, under proposed §§ 226.38(b)(1) and (c)(1) creditors would specifically be required to disclose the lack of any limitations on adjustments to the loan's interest rate. However, for some loans, especially for loans made to consolidate a consumer's existing private education loans, a number of the required disclosures may not apply. For example, the required disclosures about the availability of federal student loans would generally not apply to a consolidation loan because federal loan programs do not allow a consumer to consolidate private education loans. For this reason, the Board proposes to allow disclosures for consolidation loans to omit the disclosures required in §§ 226.38(a)(6), and (b)(4).

38(a) Application or Solicitation Disclosures

Proposed § 226.38(a) specifies the information that a creditor must disclose to a consumer on or with any application for a private education loan or any solicitation for a private education loan that does not require an application. The disclosures may be included either on the same document as the application or solicitation or on a separate document, as long as the creditor provides the required disclosures to the consumer at the required time. Other guidance on delivery of the disclosures required under § 226.38(a) is provided in proposed § 226.37, corresponding commentary, and in this section-by-section analysis under § 226.37. The Board requests comment on whether additional guidance on the appropriate delivery of the application and solicitation disclosures is needed.

38(a)(1) Interest Rates

Proposed § 226.38(a)(1) would require creditors to disclose information regarding the interest rates that apply to the private education loan being offered.

Proposed § 226.38(a)(1)(i) would require creditors to disclose the initial interest rate or range of rates that are being offered for the loan. TILA section 128(e)(1)(A) requires disclosure of the potential range of rates of interest applicable to the loan, but does not clarify how this requirement should be applied to loans with variable interest rates that might change between the time of application and approval of the loan. The Board proposes to require that the creditor disclose the minimum and maximum starting rates of interest available at the time that the creditor provides the application or solicitation to the consumer.

The Board recognizes that these rates might vary based on the creditor's underwriting criteria for a particular loan product, including a consumer's credit history. Based on consumer testing, the Board believes that providing a general explanation of how an interest rate would be determined provides the context necessary for a consumer to understand why more than one rate is being offered and how a creditor would determine a consumer's interest rate if the consumer were to apply for the loan. For this reason, the Board proposes to add a disclosure requirement under its TILA section 128(e)(1)(R) authority. If the rate will depend, in part, on a later determination of the consumer's creditworthiness, the creditor would be required to state that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors, if applicable. Proposed comment 38(a)(1)(i)–2 would clarify that the disclosure does not require the creditor to list the factors that the creditor will use to determine the interest rate. If, for instance, the creditor will determine the interest rate based on the consumer's credit score and the type of school the consumer attends, the creditor may state, for example, ''Your interest rate will be based on your creditworthiness and other factors.''

Proposed comment 38(a)(1)(i)–1 would clarify that the rates disclosed must be rates that are actually offered by the creditor. For variable rate loans, the comment would provide guidance on when a rate disclosure would be considered timely so that the disclosed rate would be deemed to be actually offered. For disclosures that are mailed, rates would be considered actually offered if the rates were in effect within 60 days before mailing; for disclosures in printed applications or solicitations made available to the general public, or for disclosures in electronic form, rates would be considered actually offered if the rates were in effect within 30 days before printing or within 30 days before the disclosures are sent to a consumer's e-mail address; for disclosures made on an Internet Web site, rates would be considered actually offered when viewed by the public; and for disclosures in telephone applications or solicitations, rates would be considered actually offered if the rates are currently applicable at the time the disclosures are provided. Proposed comment 38(a)(1)(i)–1 is consistent with the rules for variable-rate accuracy in credit and charge card application disclosures under §§ 226.5a(c), (d), and (e).

Fixed or variable rate loans, rate limitations. Proposed § 226.38(a)(1)(ii) would require the creditor to disclose whether the interest rate applicable to the loan is fixed or may increase after consummation of the transaction. TILA section 128(e)(1)(A) requires disclosure of whether the interest rate applicable to the loan is fixed or variable. Proposed comment 38(a)(1)(ii)–1 would clarify that the proposed variable rate disclosures would not apply to interest rate increases based on delinquency (including late payment), default, assumption, or acceleration. If the loan's interest rate would fluctuate solely because of one or more of these actions, but in no other circumstances, the interest rate would be considered fixed.

If the interest rate may increase after consummation, the creditor would be required to disclose any limitations on interest rate adjustments, or, if there are no limitations on interest rate adjustments, that fact. Under proposed comment 38(a)(1)(iii)–2, when disclosing any limitations on interest rate adjustments, the creditor must disclose both: (1) The maximum allowable increase during a single time period, or the lack of such a limit, and (2) the maximum allowable interest rate over the life of the loan, or the lack of a maximum rate. For example, a creditor may disclose that the maximum interest rate adjustment is two percent in a single month and that the maximum interest rate on the loan can never exceed twenty-five percent over the life of the loan. Consistent with the Board's proposal for disclosures based on the maximum rate in §§ 226.38(b) and (c) discussed below, limitations would include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations. However, if a rate limitation in the form of a legal limit applies (rather than a numerical rate limitation in the legal obligation between the parties) the creditor would be required to disclose that the maximum rate is determined by law and may change. The creditor would also be required to disclose that the consumer's actual interest rate may be higher or lower than the range of rates disclosed under § 226.38(a)(1)(i), if applicable.

Co-signer or Guarantor Disclosure. Proposed § 226.38(a)(1)(iv) implements TILA section 128(e)(1)(D), which requires disclosure of requirements for a ''co-borrower,'' including any changes in the applicable interest rates that may apply to the loan if the loan does not have a ''co-borrower.'' HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(1)(D)). The Board interprets the phrase ''co-borrower,'' to mean a co-signer.

Proposed § 226.38(a)(1)(iv) would require the creditor to state whether a co-signer is required and whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed by a third party. If the presence of a co-signer or guarantor would not affect the loan's interest rate, the creditor would be required to disclose that fact. The rule would require only a statement and the creditor would not be required to estimate any potential changes in the applicable interest rates numerically.

38(a)(2) Fees and Default or Late Payment Costs

Proposed § 226.38(a)(2) would require disclosure of the fees or range of fees applicable to the private education loan and other default or late payment costs, implementing the fee and penalty disclosures required in TILA sections

128(e)(1)(E) and (F). Under the proposal, the creditor would have to itemize all fees required to obtain the private education loan (§ 226.38(a)(2)(i)) and any applicable charges or fees, changes to the interest rate, and adjustments to principal based on the consumer's default or late payment (§ 226.38(a)(2)(ii)).

Proposed comment 38(a)(2)–1 would explain that the creditor must disclose the dollar amount of each fee required to obtain the loan, unless the fee is based on a percentage, in which case a percentage may be disclosed. If the exact amount of a fee is not known at the time of disclosure, the creditor may disclose the dollar amount or percentage for each fee as an estimated range and must clearly label the fee amount as an estimated range.

Neither the HEOA nor its legislative history clarifies whether Congress intended the fees or range of fees disclosure to require an itemization of all fees, or rather to allow for disclosure of a single dollar or percentage amount for all fees combined. The Board proposes to require an itemization of fees, but to permit the creditor to provide an estimated range of the dollar or percentage amount of each fee if a single dollar or percentage amount is not known. Hearings preceding enactment of the HEOA expressly alerted Congress to concerns about excessively high origination fees and the charging of separate additional fees.[5] In addition, the legislative history indicates that the HEOA is intended to require creditors of private education loans to provide full information to borrowers regarding their loans and to protect the interests of private education loan consumers by requiring creditors prominently to disclose all loan terms, conditions and incentives.[6]

Proposed comment 38(a)(2)–2 would clarify that the fees to be disclosed include finance charges under § 226.4, such as loan origination fees and credit report fees, as well as fees not considered finance charges but required to obtain credit, such as an application fee charged whether or not credit is extended.

Implementing TILA section 128(e)(1)(E), the creditor would also be required to disclose fees and costs based on defaults or late payments of the consumer, including adjustments to the interest rate, charges, late fees, and adjustments to principal. The HEOA requires a similar disclosure at approval and again in the final disclosure required after the consumer accepts the loan. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Sections 128(e)(2)(E) and (e)(4)(B)).

One difference between the proposal and TILA section 128(e)(1)(E) is that the latter requires disclosure of ''finance charges'' based on defaults or late payments, whereas the Board's proposed regulation eliminates the word ''finance'' and requires disclosures of ''charges'' based on defaults or late payments. TILA section 106(a) defines the ''finance charge'' as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. 15 U.S.C. 1605. The Board has interpreted the definition of ''finance charge'' in Regulation Z to expressly exclude charges for late payment, delinquency, default, or a similar occurrence. 12 CFR 226.4(c)(2). By contrast, the HEOA does not define the term ''finance charges,'' but simply states that ''finance charges'' based on the consumer's default or late payment must be disclosed. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(1)(E)). However, under current Regulation Z, there are no ''finance charges'' based on the consumer's default or late payment. To give effect to the requirements of HEOA, the Board proposes to use its authority under HEOA and impose additional disclosure requirements including charges based on defaults or late payments that are not covered by the definition of finance charge under Regulation Z. Therefore the word ''charges,'' without the word ''finance,'' is used in § 226.38(a)(2)(ii) and in the corresponding provisions for other private education loan disclosures (§§ 226.38(b)(2)(ii) and 226.38(c)(2)).

The Board is not proposing to require creditors to disclose fees that would apply if the consumer exercised an option after consummation under the agreement or promissory note for the private educational loan, such as fees for exercising deferment, forbearance, or loan modification options. Creditors would not be required to disclose third-party fees and costs for collection- or default-related expenses that might be passed on to the consumer, as these are not easily predicted and may never apply. The Board requests comment on whether creditors should be required to disclose these or other fees.

38(a)(3) Repayment Terms

Proposed § 226.38(a)(3) requires disclosure of information related to repayment.

Loan term. Proposed § 226.38(a)(3)(i) implements TILA section 128(e)(1)(G), which requires disclosure of the term of the private education loan. Proposed comment 38(a)(3)(i)–1 would clarify that the term of the loan is the period of time during which regular principal and interest payments must be paid on the loan. For example, where repayment begins upon consummation of the private education loan, the disclosed loan term would be the same as the full term of the loan. By contrast, where repayment does not begin until, for instance, after the student is no longer enrolled, the disclosed loan term would be shorter than the full term of the loan. If more than one repayment term is possible, the creditor must disclose the longest possible repayment term.

Payment deferral options. Proposed § 226.38(a)(3)(ii) would require disclosure of information relating to the options offered by the creditor to the consumer to defer payments during the life of the loan, implementing TILA section 128(e)(1)(I). Under the Board's TILA section 105(e)(1)(R) authority, the proposal would also require that if the creditor does not offer any options to defer payments, the creditor would be required to state that fact. Proposed comment 38(a)(3)–2 would clarify that payment deferral options include both options to defer payment while the student is enrolled and options for payment deferral, forbearance or payment modification during the loan's repayment term. The disclosure would be required to include a description of the length of the deferment period, the types of payments that may be deferred, and a description of any payments that are required during the deferment period. The creditor would also be permitted to disclose any conditions applicable to the deferment option, such as that deferment is permitted only while the student is continuously enrolled.

Under proposed § 226.38(a)(3)(iii) and proposed comment 38(a)(3)–3, if the creditor offers payment deferral options that apply while the student is enrolled in a covered educational institution, the creditor would be required to disclose the following additional information for each deferral option: (1) Whether interest will accrue while the student is enrolled in a covered educational institution; and (2) if interest accrues while the student is enrolled at a covered educational institution, whether payment of interest may be

[5] *See* National Consumer Law Center, ''Testimony before the U.S. Senate Committee on Health, Education, Labor, and Pensions regarding 'Ensuring Access to College in a Turbulent Economy' '' (Mar. 17, 2008), p. 8.

[6] *See* U.S. House of Representatives, Committee on Education and Labor, ''Higher Education Opportunity Act of 2008; Protecting Borrowers of Federal and Private Student Loans,'' *http://edlabor.house.gov/micro/coaa_protect.shtml* (visited Oct. 31, 2008).

deferred and added to the principal balance.

Proposed comment 38(a)(3)–4 would explain that disclosure of payment deferral options may be combined with the disclosure of cost estimates required in § 226.38(a)(4). For example, the creditor could describe each payment deferral option in the same chart or table that provides the cost estimates for each payment deferral option. This approach is used in the Board's model form contained in Appendix H–18.

38(a)(4) Cost Estimates

Implementing TILA section 128(e)(1)(K), proposed § 226.38(a)(4) would require a creditor to provide an example of the total cost to a consumer of a sample loan at the maximum rate of interest actually offered by the creditor, from the time of consummation until the loan is repaid. The HEOA does not define the term ''total cost,'' and the Board is interpreting ''total cost'' to mean the total of payments disclosed in accordance with the rules in § 226.18(h). *See* proposed comment 38(a)(4)–1.

Principal amount and fees. Under proposed § 226.38(a)(4) and comment 38(a)(4)–2, creditors would be required to disclose an example of the total cost of the loan calculated using the maximum rate of interest applicable to the loan and the fees applicable to loans at the highest rate of interest that results in a $10,000 amount financed. For example, if the creditor offers a range of rates and fees that depend on the consumer's creditworthiness and particular fees will apply to loans with the highest interest rate, then the creditor must include those fees in the total cost example.

In order to provide consumers with information about the effect that financing fees has on the total cost of the loan, proposed § 226.38(a)(4)(i) and comment 38(a)(4)–2 would require that the creditor base the total cost example on a $10,000 principal amount plus the finance charges applicable to loans at the maximum rate of interest. For example, if the creditor charges a 3% origination fee on loans with the highest interest rate, and finances the 3% fee, the creditor would calculate the total cost of the loan based on a $10,300 principal amount. However, while the creditor must base the calculation on the principal amount, the creditor must disclose that the example provides the total cost of a $10,000 amount financed, rather than disclosing the principal amount used in calculating the loan.

The HEOA calls for an example based on the principal amount actually offered by the creditor. However, at the application stage, the creditor does not know the specific principal amount the consumer will request. Rather than permit each creditor to choose a principal amount upon which to base the disclosure, the Board believes that specifying uniform assumptions about the principal amount will allow consumers more easily to compare different loan products. The proposal would allow consumers to compare the cost of receiving a uniform $10,000 under different loans.

The Board recognizes that finance charges could be added to the total cost of the loan in two different ways. The proposal would require creditors to assume that the consumer borrows more than $10,000 if any finance charges are assessed. Alternatively, the total cost could be calculated assuming that the consumer only borrows $10,000 and pays finance charges separately by cash or check, or deducts them from the $10,000 loan amount. Under the alternative approach, the total cost would be calculated by adding any finance charges to the total of payments. For example, if a $10,000 has a 3% origination fee, the creditor would calculate the total of payments based on a $10,000 loan amount and add the $300 finance charge to the total of payments to calculate the total cost of the loan. By contrast, the proposal would require increasing the assumed principal amount to account for any finance charges, thereby allowing the consumer to compare not only the amount of the finance charges, but the effect on the loan's total cost of repaying those finance charges plus interest over time.

The Board also proposes to provide creditors with flexibility if they do not make loans of the size that the Board specifies. If the creditor only offers a particular loan for less than $10,000, the creditor must use a $5,000 principal amount.

The Board requests comment on alternative ways of ensuring that the total cost example reflects the cost of loan fees. Specifically, the Board requests comment on whether an assumed principal amount of $10,000 should be used without adding finance charges to the principal amount, but instead separately adding the finance charges to the total of payments. The Board requests comment on whether private education loan consumers have historically been more likely to add finance charges to the loan amount they request, or to deduct the finance charges from the principal amount requested (or pay them separately by cash or check). The Board also requests comment on practical limitations, if any, for creditors to determine the fees under § 226.38(a)(2)(i) that would be applicable to loans where the maximum rate of interest applies. The Board also requests comment on whether the total cost example should be based on a $10,000 amount financed, as proposed, or on a higher or lower amount. The Board also requests comment on whether the $5,000 amount financed is an appropriate alternative where creditors do not offer loans of $10,000 or more.

Maximum rate. Proposed comment 38(a)(4)–3 would clarify that the maximum rate of interest used to calculate the example of the total cost of the loan must be the maximum initial rate of interest disclosed in the range of rates under § 226.38(a)(1)(i). As discussed above in the section-by-section analysis under § 226.38(a)(1)(i), this would mean the maximum interest rate that the creditor offers at the time that the application or solicitation is provided.

Payment deferral options. Under the proposed rule, the creditor would have to disclose total loan cost examples for each payment deferral option disclosed in § 226.38(a)(3)(iii). If a creditor offers a private education loan where payment options include, for example, (1) immediate repayment of both principal and interest upon consummation, (2) deferment of principal payments while the student is in school, or (3) deferment of both principal and interest payments while the student is in school, the disclosure must reflect a cost example for each option.

Proposed comment 38(a)(4)–4 would clarify that when a creditor calculates an estimate of the total cost of the loan where interest capitalizes, the creditor must calculate the estimate using the same capitalization method that it would use for the loan itself. For example, if a creditor would capitalize interest on the loan on a quarterly basis, then each total cost estimate where interest is capitalized must assume interest capitalizes on a quarterly basis.

Proposed comment 38(a)(4)–5 would provide guidance on the assumed deferral period on which to base the total cost example. For loan programs intended for educational expenses of undergraduate students, the creditor must assume that the consumer defers payments for four years plus the loan's maximum applicable grace period, if any. For all other loans the creditor must assume that the consumer defers for the lesser of two years plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program. The Board believes that consumers will be better able to compare loan cost examples for loans

that allow the consumer to defer payments if those examples are based on uniform assumptions about how long the consumer will remain in school. The Board proposes to require creditors assume a four-year deferral period for consumers applying for undergraduate loans. Most undergraduate programs are four years long, and using a four year term would ensure that the disclosure is most meaningful to consumers who are at the beginning of their undergraduate education, and therefore likely are considering education loans for the first time. For all other types of loans, the proposal requires creditors assume a two year enrollment period or to use the maximum deferral period for the loan if the maximum period is less than two years. The Board believes that a two year enrollment period represents a term that would be applicable to most other postsecondary education programs and would meaningfully inform consumers of the effect of deferring payment on the total costs of the loan for more than a minimal period of time.

The Board requests comment on the proposed deferral period assumptions for calculating the total cost examples under § 226.38(a)(4). Specifically, the Board requests comment on whether creditors should be allowed to modify the total cost disclosure if the creditor knows a consumer's specific situation. For example, if the creditor knows that a consumer is a college senior, whether the creditor should be allowed to provide a cost estimate based on a one year deferral period, rather than a four year deferral period. The Board also requests comment on whether two years is an appropriate term for non-undergraduate private education loans, or whether another term that would be a statistically more accurate representation of an average or median deferment period should be used. The Board also requests comments on whether lenders should be permitted to modify the disclosure for specific educational programs that are generally of a fixed length, such as three years for law school or four years for medical school.

38(a)(5) Eligibility

Proposed § 226.38(a)(5) would implement TILA section 128(e)(1)(J) which requires disclosure of the general eligibility criteria for a private education loan. The proposal would specify the eligibility criteria that must be disclosed. The creditor would have to disclose any age or school enrollment eligibility requirements regarding the consumer or co-signer, if applicable. The Board requests comments on whether other types of eligibility requirements should be disclosed.

38(a)(6) Alternatives to Private Education Loans

In § 226.38(a)(6), the Board proposes to implement TILA sections 128(e)(1)(L), (M), (N), and (Q) by requiring statements regarding the following alternatives to private education loans: (1) Education loans offered or guaranteed by the federal government and (2) school-specific education loan benefits and terms potentially offered by a covered educational institution.

Concerning federal education loans, a creditor would be required to disclose the following: (1) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), (2) the interest rates available under each program and whether the rates are fixed or variable, as prescribed in the Higher Education Act of 1965 (20 U.S.C. 1077a), and (3) a statement that the consumer may obtain additional information concerning Federal student financial assistance from the relevant institution of higher education, or at the Web site of the Department of Education, including an appropriate Web site address. Proposed comment 38(a)(6)(ii)–1 would explain that the disclosure must list the address of an appropriate U.S. Department of Education Web site such as ''*federalstudentaid.ed.gov*.''

To avoid overloading consumers with information and to ensure that consumers notice the most important information about federal student loans, the Board is proposing to exercise its authority under TILA section 105(a) to make exceptions to the statute by not requiring creditors to state that federal loans may be obtained in lieu of or in addition to private education loans. Instead the Board's proposed model forms would label the disclosure as ''Federal Loan Alternatives.'' *See* proposed App. H–18, H–19. For these reasons, and those explained further below, the Board believes that this exception is necessary and proper to effectuate meaningful disclosure of credit terms to consumers.

The Board also proposes to exercise its authority under TILA section 105(f) to exempt private education loans from the specific disclosure requirement about federal loans, pursuant to the HOEA amendment to TILA sections 128(e)(1)(M) and 128(e)(2)(L). The Board believes that this specific requirement does not provide a meaningful benefit to consumers in the form of useful information or protection. In testing, consumers' understanding that federal loans are available in lieu of or in addition to private education loans was enhanced by simply providing them a clear and prominent label indicating that the disclosures contained information about federal loan alternatives. The Board considered that the private education loan population includes students who may lack financial sophistication and that the size of the loan could be relatively significant and important to the borrower. However, as explained above, the Board believes that the borrower would receive meaningful information about federal loans through the other disclosures and the model form. The Board also recognizes that private education loans would not be secured by the principal residence of the consumer, which is a factor for consideration under section 105(f). Furthermore, the HEOA provides significant rights, such as the right to cancel the loan. The Board believes that consumer protection would not be undermined by this exemption.

For each title IV program enumerated in the disclosure (*e.g.*, Perkins, Stafford (both subsidized and unsubsidized), and PLUS loans), the creditor must disclose the interest rate corresponding to each loan program, as well as whether those rates are fixed or variable. The Board proposes to require disclosure of whether the federal loan rates are fixed or variable, under its TILA section 128(e)(1)(R) authority. The Board believes this additional disclosure is necessary in order to provide consumers with a more complete description of the nature of the federal loans' interest rates and to aid in comparison of federal loan programs to private education loans. During the Board's consumer testing, consumers have indicated that the disclosure that federal student loans have fixed rates is important information to them. Federal student loan interest rates are set by statute. Currently, federal student loan interest rates are fixed rates rather than variable rates, but this has not always been the case. For this reason, the proposal would require a disclosure of whether the rates are fixed or variable.

The statute that sets the federal student loan interest rates currently contains a schedule with different fixed rates for loans originated at different times. *See* Higher Education Act of 1965 (20 U.S.C. 1077a). For example, the fixed rates on subsidized Stafford loans are currently 6.0% for loans originated or applied for (depending on the loan) before July 1, 2009. For loans after July 1, 2009, the fixed interest rate will be

5.6%. Where the interest rate for a loan varies depending on the date of disbursement or receipt of application, the creditor must disclose only the current interest rate as of the time the disclosure is provided.

To implement TILA section 128(e)(1)(L), the proposal would also require the creditor to disclose that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form. School-specific education loan benefits and terms might include loans with special terms negotiated by the school with particular creditors, or loans extended by the covered educational institution itself to its students. The creditor would not be required to state what school-specific education loan benefits and terms might be available because these may vary widely, but rather would be required to alert the consumer to the possibility that school-specific education loan benefits and terms might be available to the consumer.

38(a)(7) Rights of the Consumer

Proposed § 226.38(a)(7) would implement TILA section 128(e)(1)(O), by identifying for the consumer certain rights relating to the private education loan.

Thirty day right of acceptance. Proposed § 226.38(a)(7)(i) would require the creditor to alert the consumer that, should the consumer apply for the loan and the loan application be approved, the consumer would have the right to accept the terms of the loan at any time within 30 calendar days following notice of loan approval. TILA section 128(e)(1)(O)(i) requires a disclosure that the consumer has 30 days to accept and consummate the loan. However, as discussed in the section-by-section analysis under § 226.39(c)(1), because acceptance and consummation may not happen at the same time, the Board is proposing to provide the consumer the full 30-day period in which to accept the loan, even if consummation happens later.

Prohibition on loan term changes. Under proposed § 226.38(a)(7)(ii), the creditor would have to state that, except for changes based on adjustments to the index used to determine the rate for the loan, the creditor may not change the rates and terms of the loan during the 30-day acceptance period described in § 226.38(a)(7)(i). The proposed rule allows the creditor to give consumers a period of time longer than 30 days in which to accept the loan and during which time the rates and terms offered could not change (except for changes based on adjustments to the applicable index). Creditors choosing to give consumers a period of time in which to accept the loan that is longer than 30 calendar days would be required to disclose this alternate time period.

As discussed in the section-by-section analysis in § 226.39(c), the Board is proposing to allow the creditor to make unequivocally beneficial changes, to make changes based on a request by the consumer, and is requesting comment on whether other changes should be allowed. The Board requests comment on whether the application disclosure should include more detail on possible changes to the rate or terms.

38(a)(8) Self-Certification Information

Proposed § 226.38(a)(8), which implements TILA section 128(e)(1)(P), would require a statement, if applicable, that before the loan may be consummated, the consumer must obtain the self-certification form required under § 226.39(e), and sign and submit the completed form to the creditor.

As discussed in the section-by-section analysis under § 226.39(e), the disclosure regarding the self-certification form is required only for expenses to be used by a student enrolled in an institution of higher education. It would not apply to consolidation loans and would not apply to loans to students attending covered educational institutions that do not meet the definition of institution of higher education.

226.38(b) Approval Disclosures

Proposed § 226.38(b) specifies the information that a creditor must disclose to a consumer on or with any notice of approval provided to the consumer. Guidance on delivery of the disclosures required under § 226.38(b) is provided in proposed § 226.37, corresponding commentary, and in the section-by-section analysis under § 226.37.

As discussed above in the section-by-section analysis under § 226.38(a), the creditor would be required to make the disclosures required under §§ 226.17 and 226.18 as well as the disclosures required under § 226.38(b).

38(b)(1) Interest Rate

Implementing TILA section 128(e)(2)(A), proposed § 226.38(b)(1)(i) would require a creditor to disclose the interest rate that applies to the private education loan for which the consumer has been approved.

Fixed or variable rate, rate limitations. Implementing TILA section 128(e)(2)(A) and (B), proposed §§ 226.38(b)(1)(ii) and (iii) would require the creditor to disclose whether the interest rate is fixed or variable and any limitations, or the absence of limitations, on changes to the variable interest rate.

Proposed comment 38(b)(1)–1 would clarify that a private education loan would only be considered to have a variable rate if the terms of the legal obligation allow the creditor to increase the rate originally disclosed to the consumer. However, a rate is not considered variable if increases result only from delinquency, default, assumption or acceleration. The comment would also clarify that the creditor must make the other variable-rate disclosures required under §§ 226.18(f)(1)(i) and (iii)—the circumstances under which the rate may increase and the effect of an increase, respectively. The creditor would not be required to provide an example of the payment terms that would result from an increase under § 226.18(f)(1)(iv). Current comment 18(f)(1)(iv)–2 provides that creditors need not provide the hypothetical example for interim student credit extensions. However, the Board believes that the requirement to disclose the maximum monthly payment based on the maximum possible rate in § 226.38(b)(3)(viii) satisfies the requirement under § 226.18(f)(1)(iv) of an example of the payment terms that would result from an increase in the rate. In order to avoid duplicative examples of the effect of a rate increase, proposed comment 38(b)(1)–1 would clarify that, although the creditor need not disclose a separate example under § 226.18(f)(1)(iv), the creditor is nevertheless required to disclose the maximum monthly payment in § 226.38(b)(2)(viii).

As explained in the section-by-section analysis under § 226.18 (discussing the proposed changes to comment 18(f)(1)(ii)–1), proposed comment 38(b)(1)–2 would clarify that the rules regarding disclosure of limitations on interest rate increases for private education loans differ from the general rules in § 226.18(f)(1)(ii) and comment 18(f)(1)(ii)–1. Specifically, proposed § 226.38(b)(1)(iii) would require that creditors explicitly disclose the lack of any limitations on interest rate adjustments. By contrast, existing comment 18(f)(1)(ii)–1 does not require creditors to disclose the absence of limits on interest rate adjustments. In addition, under proposed § 226.38(b)(1)(iii), limitations on rate increases include, rather than exclude, legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations. However, if a rate limitation in the form of a legal limit applies

(rather than a numerical rate limitation in the legal obligation between the parties) the creditor must disclose that the maximum rate is determined by law and may change.

38(b)(2) Fees and Default or Late Payment Costs

Implementing TILA sections 128(e)(2)(E) and (F), proposed § 226.38(b)(2) and proposed comment 38(b)(2)–1 would require the creditor to provide to the consumer the fee and penalty information required under proposed § 226.38(a)(2), as explained in the section-by-section analysis for proposed § 226.38(a)(2). Under § 226.18(l) creditors are required to disclose any dollar or percentage charge that may be imposed before maturity due to late payment, other than a deferral or extension charge. Creditors must disclose any charges that are required to be disclosed under § 226.18(l) with the disclosures required under § 226.38(b)(2). In addition, if the creditor includes the itemization of the amount financed under § 226.18(c), any fees disclosed as part of the itemization need not be separately disclosed elsewhere.

38(b)(3) Repayment Terms

Proposed § 226.38(b)(3) requires disclosure of information related to repayment.

Principal amount. Proposed § 226.38(b)(3)(i) implements TILA section 128(e)(2)(D), which requires disclosure of the ''initial approved principal amount.'' Regulation Z currently uses the term ''principal loan amount'' as part of its requirement to disclose the ''amount financed.'' As explained below, however, the Board is not proposing to equate the terms ''principal loan amount'' and ''initial approved principal amount.''

Under current Regulation Z, the amount financed must be calculated by doing the following:

(1) Determining the principal loan amount * * * (subtracting any downpayment);

(2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and

(3) Subtracting any prepaid finance charge. 12 CFR 226.18(b).

Regarding the first part of this calculation, determining the ''principal loan amount,'' the commentary states that creditors have the option (when the charges are not add-on or discount charges) of either including or excluding the amount of the finance charges. As the commentary points out, this means that the ''principal loan amount'' for this calculation may, but need not, equal the face amount of the note. Comment 18(b)(3)–1. If the creditor opts to include finance charges in the principal loan amount, the creditor should deduct these charges from the principal loan amount as prepaid finance charges when calculating the amount financed. *Id.*

Rather than equate Regulation Z's existing term ''principal loan amount'' with the HEOA's ''initial approved principal amount,'' the Board's view is that the most straightforward and easy-to-understand approach is to define ''initial approved principal amount'' as the face amount of the note if the transaction occurred on the terms approved. The ''initial approved principal amount'' under § 226.38(b)(3)(i) should include all charges incorporated in the approved loan amount—in other words, the total amount borrowed. This amount should reflect what the face amount of the note would be if the loan were given based on the loan amount initially approved. For example, prepaid finance charges, as defined and discussed in comment 18(b)(3)–1, should not be included if they would not be included in the amount on the face of the note.

The Board believes that defining ''initial approved principal amount'' in this way will not cause consumer confusion with Regulation Z's use of the term ''principal loan amount'' in § 226.18(b), because ''principal loan amount'' is not currently a stand-alone disclosure in Regulation Z that consumers could confuse with the ''initial approved principal amount.'' Defining the ''initial approved principal amount'' in § 226.38(b)(3)(i) as distinct from the term ''principal loan amount'' in § 226.18(b) may also reduce creditor confusion about whether the definition of ''initial approved principal amount'' changes how the ''amount financed'' is calculated under § 226.18(b). As noted above, ''principal loan amount'' is a term used only as part of the calculation of the ''amount financed'' disclosure. Current comment 18(b)(3)–1 permits creditors to decide whether to include or exclude prepaid finance charges in the ''principal amount,'' but solely in the discrete context of calculating the ''amount financed.''

In addition, in order to minimize potentially duplicative disclosures, proposed comment 38(b)(3)–1 would explain that creditors may disclose the initial approved principal amount as part of the itemization of the amount financed. The creditor would be permitted to disclose the initial approved principal amount as part of the itemization of the amount financed only if the creditor states the approved principal amount as part of the itemization. The proposed sample form in Appendix H–22 provides an example of this disclosure. Also, as discussed above, § 226.17(a)(1) would be revised to allow the itemization of the amount financed to be included with the required disclosures, rather than disclosed separately.

Loan term. Proposed § 226.38(b)(3)(ii) and comment 38(b)(3)–2 implement TILA section 128(e)(2)(G), which requires disclosure of the maximum term of the private education loan program. The term of the loan is the period of time during which regular principal and interest payments must be paid on the loan. For example, where repayment begins upon consummation of the private education loan, the disclosed loan term would be the same as the full term of the loan. By contrast, where repayment does not begin until, for instance, after the student is no longer enrolled, the disclosed loan term would be shorter than the full term of the loan. If more than one repayment term is possible, the creditor must disclose the longest possible repayment term.

Payment deferral options. Proposed § 226.38(b)(3)(iii) and proposed comment 38(b)(3)–3 would require the creditor to provide information about deferral options, implementing TILA section 128(e)(2)(J). This disclosure is similar to the requirement under proposed § 226.38(a)(3)(ii), as explained in the section-by-section analysis for that section. The difference between proposed §§ 226.38(a)(3)(ii) and 226.38(b)(3)(iii) is that the creditor must explain the deferral option chosen by the consumer, if the consumer has chosen a deferral option, and any deferral options that the consumer is permitted to choose in the future. The section-by-section analysis of the deferral options disclosure of § 226.38(a)(3)(ii) describes the information that must also be included in the explanation of deferral options under § 226.38(b)(3)(iii).

Payments required during enrollment. Proposed § 226.38(b)(3)(iv) and comment 38(b)(3)–4 would require the creditor to disclose to the consumer whether any payments are required on the loan while the student is enrolled, implementing TILA section 128(e)(2)(I). The creditor also must describe the payments required during enrollment, such as principal and interest payments or interest-only payments. The payments required during enrollment may depend on the deferral option chosen by the consumer. The disclosure under § 226.38(b)(3)(iv) would be required to correspond to the deferral option chosen by the consumer.

Estimate of interest accruing during enrollment. Also implementing TILA section 128(e)(2)(I), proposed § 226.38(b)(3)(v) would apply only if interest will be charged on the private education loan while the student is enrolled, and the consumer will not be paying interest on the loan during this time. This disclosure would require the creditor to give the consumer an estimate of the interest that will accrue on the loan during enrollment.

Bankruptcy limitations. Proposed § 226.38(b)(3)(vi) would require disclosure of a statement of limitations on the discharge of a private education loan in bankruptcy. Proposed comment 38(b)(3)–5 would state that a creditor may comply with § 226.38(b)(vi) by disclosing the following statement: ''If you file for bankruptcy you may still be required to pay back this loan.'' To avoid overloading the consumer with information, the Board proposes to require a general statement that student loans may not be dischargeable in bankruptcy rather than require a detailed disclosure of student loan bankruptcy rules and limitations.

The disclosure of limitations of discharge of private educational loans in bankruptcy is mandated by TILA section 128(e)(2)(E) for the approval disclosures and TILA section 128(e)(4)(B) for the final disclosures. It is not statutorily required in the application and solicitation disclosures prescribed by TILA section 128(e)(1)(E). The Board requests comment on whether disclosure of education loan discharge limitations in bankruptcy should be included in the application and solicitation disclosures as implemented by § 226.38(a)(2).

Total amount for repayment. TILA section 128(e)(2)(H) requires the creditor to disclose an estimate of the total amount for repayment calculated based on: (1) the interest rate in effect on the date of approval; and (2) the maximum possible rate of interest applicable to the loan or, if a maximum rate cannot be determined, a good faith estimate of the maximum rate.

Proposed § 226.38(b)(3)(vii) would define the total amount for repayment in the same manner as the current Regulation Z closed-end credit disclosure of the total of payments. 12 CFR 226.18(h). Neither the HEOA nor its legislative history provides guidance on the definition of ''total amount for repayment.'' Regulation Z defines ''total of payments'' as the amount the consumer will have paid when the consumer has made all scheduled payments. 12 CFR 226.18(h). In some cases, the total of payments will not exactly match the total amount that the borrower must repay. For example, if the borrower pays prepaid finance charges separately in cash, the amount of these charges will not be reflected in the total of payments. However, the Board believes that requiring separate disclosures for the ''total amount for repayment'' and the ''total of payments'' would likely cause consumer confusion and that both terms are meant to capture the amount that the borrower will have paid after making all scheduled payments to repay the loan. Accordingly, in order to avoid duplication, proposed comment 38(b)(3)–6.i would clarify that compliance with the total of payments disclosure under § 226.18(h) constitutes compliance with the requirement to disclose the total amount for repayment at the interest rate in effect on the date of approval.

Maximum rate. For the requirement that the creditor disclose an estimate of the total amount for repayment at the maximum possible rate of interest, proposed § 226.38(b)(3)(vii) and comment 38(b)(3)–6.ii would require that either the maximum possible rate be used or, if a maximum rate cannot be determined, an assumed rate of 21%. For example, if the creditor were in a state without a usury limit on interest rates, and the legal agreement between the parties did not specify a maximum rate, the creditor would have to base the disclosure on a rate of 21%.

Under proposed comment 38(b)(3)–6.ii, a maximum rate would include a legal limit in the nature of a usury or rate ceiling under state or federal statutes or regulations, and the creditor would be required to calculate the total amount for repayment based on that rate, and to disclose that the maximum rate is determined by law and may change.

TILA section 128(e)(2)(H) requires that, if a maximum rate cannot be determined, the creditor must use a good faith estimate of the maximum rate. The Board would use its authority under the HEOA to add a requirement that where a maximum rate cannot be determined, the creditor use a rate of 21%. The Board believes that such a rule is necessary and appropriate for consumers to make informed borrowing decisions. A rule providing a uniform maximum rate assumption will give creditors more certainty in complying with the regulation. The Board believes that the proposed rate of 21% represents an appropriate midpoint in the range of usury rate ceilings that consumers in the private education loan market are likely to face. Thus, the Board believes that basing the disclosure on an assumed maximum rate of 21% will assist consumers in comparing different loans by providing consumers with an estimated total amount for repayment that will be similar between states with and without usury rate limitations.

In addition, under the Board's TILA section 128(e)(2)(P) and 128(e)(4)(B) authority, the proposal would add a requirement that, if the legal obligation between the parties does not specify a numeric maximum rate, the creditor must accompany the estimated total amount for repayment with a statement that: (1) No maximum interest rate applies to the private education loan; (2) the maximum interest rate used to calculate the total amount for repayment is an estimate; and (3) the total amount for repayment disclosed is an estimate and will be higher if the applicable interest rate increases. The Board believes that these additional disclosures are necessary to inform consumers that the examples in the disclosure statement are merely illustrative and that their loan in fact has no maximum rate.

The HEOA allows the creditor to disclose the total amount for repayment under § 226.38(b)(3)(vii) as an estimate. Proposed § 226.38(b)(3) would also require only an estimated total amount for repayment. The Board recognizes that permitting disclosure of an estimate of the total amount for repayment is necessary because the interest rates on most private education loans are variable and the repayment schedule is often not known at the time that the disclosures under § 226.38(b) must be provided to the consumer. However, the creditor would not be permitted to disclose an estimate of the total amount for repayment if the applicable rates and repayment schedule are known at the time of disclosure, such as with a consolidation loan.

The Board requests comment on whether a specific maximum rate assumption should be used for disclosures where a maximum rate cannot be determined, and, if so, whether 21% is the most appropriate rate or whether another rate should be used. The Board also requests comment on whether, if a maximum rate of interest is to be specified, the Board should publish the rate periodically, based on a median or a commonly used usury rate applicable to private education loans in various states. The Board also requests comment on alternative approaches by which creditors may make a good faith estimate of a maximum possible rate when a maximum rate cannot be determined.

Maximum monthly payment. Proposed § 226.38(b)(3)(viii) would

implement TILA section 128(e)(2)(O) by requiring the creditor to disclose the maximum monthly payment calculated based on the maximum rate of interest applicable to the loan or, if a maximum rate cannot be determined, for the reasons discussed above, an assumed rate of 21%. In addition, as discussed above, under the Board's TILA section 128(e)(2)(P) and 128(e)(4)(B) authority, the proposal would add a requirement that the creditor state that: (1) No maximum interest rate applies to the loan; (2) the maximum interest rate used to calculate the maximum monthly payment amount is an estimate; and (3) the maximum monthly payment amount is an estimate and will be higher if the applicable interest rate increases.

As with proposed § 226.38(b)(3)(vii), the Board requests comment on other approaches by which creditors may calculate a maximum payment when a maximum rate cannot be determined.

38(b)(4) Alternatives to Private Education Loans

Implementing TILA section 128(e)(2)(M), proposed §§ 226.38(b)(4)(i), (ii), and (iii) would require the creditor to provide the information about alternatives to private education loans for financing education that is also required under proposed §§ 226.38(a)(6)(i), (ii), and (iii) and explained in the section-by-section analysis for those sections. The Board again proposes to use its authority under TILA sections 105(a) and 105(f) to make exceptions to the statute by not requiring creditors to state that federal loans may be obtained in lieu of or in addition to private education loans. As explained in the section-by-section analysis for §§ 226.38(a)(6)(i), (ii), and (iii), the Board believes that this exception is necessary and proper to effectuate meaningful disclosure of credit terms to consumers.

38(b)(5) Rights of the Consumer

Implementing TILA section 128(e)(2)(L), proposed § 226.38(b)(5) would require the creditor to disclose that the consumer has the right to accept the loan on the terms approved for up to 30 calendar days. The disclosure would also inform the consumer that the rate and terms of the loan will not change during this period, except for changes to the rate based on adjustments to the index used for the loan.

Under the Board's TILA section 128(e)(2)(P) authority, the disclosure would be required to include the specific date on which the 30-day period expires and indicate that the consumer may accept the terms of the loan until that date. For example, if the consumer received the disclosures on June 1, the disclosure would be required to state that the consumer could accept the loan until June 30. The Board believes that this disclosure is necessary to inform consumers of the precise date when the 30-day period expires because the date the consumer is deemed to receive the disclosure may differ slightly from the date the consumer actually receives the disclosure. The creditor would also be required to disclose the method or methods by which the consumer may communicate acceptance. The Board believes that this disclosure is necessary to ensure consumers understand the specific steps required to accept the loan. Proposed comment 39(c)–3, discussed below, would provide guidance to creditors on disclosing methods by which consumers may communicate acceptance.

As discussed in the section-by-section analysis in § 226.39(c), the Board is proposing to allow the creditor to make unequivocally beneficial changes, to make changes based on a request by the consumer, and is requesting comment on whether other changes should be allowed. The Board requests comment on whether the disclosure should include more detail on possible changes to the rate or terms.

38(c) Final Disclosures

Proposed § 226.38(c) requires the creditor to disclose to the consumer a third set of disclosures after the consumer accepts the loan and at least three business days before the loan funds are disbursed. Proposed § 226.38(c) implements TILA section 128(e)(4), which requires the creditor to provide this final set of information contemporaneously with consummation. Regulation Z defines ''consummation'' as the time that a consumer becomes contractually obligated on a credit transaction. *See* 12 CFR 226.2(a)(13). The corresponding commentary defers to state law to determine when consummation occurs. *See* comment 2(a)(13)–1. As discussed earlier in the section-by-section analysis under § 226.37, to avoid confusion about when the final private education loan disclosures should be given due to differing state law definitions of consummation, and to ensure that consumers have a meaningful opportunity to exercise their cancellation right under TILA section 128(c)(8), the Board proposes to interpret ''contemporaneously with consummation'' to require creditors to provide these final disclosures after acceptance and at least three business days before loan funds are disbursed.

38(c)(1) Interest Rate

Proposed § 226.38(c)(1) would require creditors to disclose the interest rate that applies to the private education loan accepted by the consumer.

Fixed or variable rate, rate limitations. Proposed § 226.38(c)(1) would also require the creditor to provide to the consumer the rate information required under proposed §§ 226.38(b)(1)(ii) and (iii), as explained in the section-by-section analysis for those sections.

38(c)(2) Fees and Default or Late Payment Costs

Proposed § 226.38(c)(2) would require the creditor to provide to the consumer the fee and default or late payment information required under proposed § 226.38(b)(2), as explained in the section-by-section analysis for that section.

38(c)(3) Repayment Terms

Proposed § 226.38(c)(3) would require the creditor to provide to the consumer the repayment information required under proposed § 226.38(b)(3), as explained in the section-by-section analysis for that section.

38(c)(4) Cancellation Right

Proposed § 226.38 and comment 38(c)–1 would implement TILA section 128(e)(4)(C) by requiring the creditor to disclose to the consumer the following information:

(i) The consumer has the right to cancel the loan, without being penalized, at any time before the cancellation period under § 226.39(d) expires; and

(ii) Loan proceeds will not be disbursed until after the cancellation period expires. Under the Board's TILA section 128(e)(4)(B) authority, the proposal would add a requirement that creditor disclose the specific date on which the cancellation period expires and include the methods or methods by which the consumer may cancel the loan.

Proposed comment 38(c)–2 would clarify that the statement of the right to cancel must be more conspicuous than any other disclosure required under § 226.38(c), except for the finance charge, the interest rate, and the creditor's identity. *See* proposed § 226.37(c)(2)(iii). Under proposed comment 38(c)–2, the Board would deem the right to cancel statement more conspicuous than other disclosures if the creditor segregated the statement from the other disclosures, placed the statement near the top of the disclosure document, and highlighted the statement in relation to other required

disclosures. Examples of appropriate highlighting given in comment 38(c)–2 are that the statement may be outlined with a prominent, noticeable box; printed in contrasting color; printed in larger type, bold print or different type face; underlined; or set off with asterisks.

Comments 39(d)–1, and 2, discussed below, would provide additional guidance about how the creditor should notify the consumer of the cancellation right and how the consumer may exercise this right.

Alternatives to Private Education Loans

Based on the results of the Board's consumer testing, the Board is proposing to use its authority under TILA section 105(a) to create an exception from the requirement in TILA section 128(e)(4)(b) that the creditor provide to the consumer with information about federal alternatives to private education loans. Consumers have overwhelmingly indicated that this information would not be meaningful or useful to them at the time when they would receive the final disclosures. Consumers indicated that by the time they had applied for and accepted a private education loan, they already would have made a decision as to whether or not to seek other loan alternatives.

The Board would also exercise its authority under TILA section 105(f) to exempt private education loans from the specific requirement to disclose information about federal loan alternatives in the final disclosure form. The Board believes that this disclosure requirement does not provide a meaningful benefit to consumers in the form of useful information or protection. The Board considered that the private education loan consumer population may contain students who lack financial sophistication and that the size of the loan could be relatively significant and important to the borrower. However, as explained above, consumers tested indicated that this disclosure was not useful at this final stage in the loan process. Borrowers would receive the information about federal loans at application and approval. The Board also recognizes that private education loans would not be secured by the principal residence of the consumer, which is a factor for consideration under section 105(f). Furthermore, the HEOA provides significant rights, such as the right to cancel the loan. The Board believes that consumer protection would not be undermined by this exemption.

The Board requests comment on whether it should adopt this proposed exception.

Section 226.39—Limitations on Private Education Loans

Section 226.39 contains rules and limitations on private educational loans. It includes a prohibition on co-branding in the marketing of private educational loans, rules governing the 30-day acceptance period and three-day cancellation period for private educational loans, the requirement that the creditor obtain a self-certification form from the consumer before consummating a private education loan, and the requirement that creditors in preferred lender arrangements provide certain information to covered educational institutions.

39(a) Co-Branding Prohibited

The HEOA prohibits creditors from using the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols readily identified with a covered educational institution in the marketing of private education loans in any way that implies that the covered educational institution endorses the creditor's loans.

Proposed § 226.39(a)(1) would implement this prohibition by prohibiting creditors from referencing a covered educational institution in a way that implies that the educational institution endorses the creditor's loans. At the same time, the Board recognizes that a creditor may at times have legitimate reasons for using the name of a covered educational institution. For instance, some educational institutions' financial aid websites might provide links to specific creditors' websites. Creditors might provide a welcome page to the student that references the name of the school that provided the link. Some creditors may have school-specific terms or benefits and may need to use the name of the school to provide accurate information to consumers about the nature and availability of its loan products.

For these reasons, proposed § 226.39(a)(2) would provide creditors with the following safe harbor for those cases where the creditor's marketing does make reference to an educational institution. Marketing that refers to an educational institution would not be deemed to imply endorsement if the marketing clearly and conspicuously discloses that the educational institution does not endorse the creditor's loans, and that the creditor is not affiliated with the educational institution. This safe harbor approach is consistent with the views expressed in the Conference Report to the HEOA, which states that the conferees intended that creditors could demonstrate that they are not implying endorsement by the covered educational institution by providing a clear and conspicuous disclaimer that the use of the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols readily identified with a covered educational institution, in no way implies endorsement by the covered educational institution of the creditor's private education loans and that the creditor is not affiliated with the covered educational institution. The Board believes that this safe harbor approach will inform consumers that a reference to a covered educational institution does not mean that the institution endorses the loan being marketed while also providing clarity about how to market private education loans without violating TILA and Regulation Z.

Comment 39(a)–1 would clarify the term ''marketing'' as used in proposed § 226.39. The term would include all ''advertisements'' as that term is defined in Regulation Z. 12 CFR 226.2(a)(2). The proposal explains that the term marketing is broader than advertisement, however, and includes documents that are part of the negotiation of the specific private education loan transaction. For example, applications or solicitations, promissory notes or contract documents would be considered marketing. The Board believes that a broader meaning of marketing is needed to cover documents, such as promissory notes, that are not considered advertisements, but that may use the name of the educational institution prominently in a potentially misleading way (such as naming the loan the ''University of ABC Loan,'' rather than ''Creditor's Loan for ABC University Students'').

Proposed comment 39(a)–2 clarifies that referencing a covered educational institution in a way that implies that the educational institution is offering or making the loan rather than the creditor is a form of implying that the educational institution endorses the loan and is therefore not permitted under § 226.39(a)(1). However, the use of a creditor's own name, even if that name includes the name of a covered educational institution, would not imply endorsement. For example, a credit union whose name includes the name of a covered educational institution would not be prohibited from using its own name. In addition, a state's or an institution of higher education's use of a state seal, with

appropriate authorization, in the marketing of state education loan products does not imply endorsement.[7]

Proposed comment 39(a)–3.i provides a model clause that creditors may use in complying with the safe harbor in § 226.39(a)(2). The creditor would be considered to have complied with § 226.39(a)(2) if the creditor includes a clear and conspicuous statement, using the creditor's name and the covered educational institution's name, that ''[Name of creditor]'s loans are not endorsed by [name of school] and [name of creditor] is not affiliated with [name of school].''

39(b) Preferred Lender Arrangements

The Board recognizes that in certain instances the prohibition on creditors' implying endorsement from covered educational institutions would not be appropriate because it would not be factually correct. The HEOA specifically allows covered educational institutions to endorse the private education loans of creditors with which they have a ''preferred lender arrangement.'' The HEOA defines a ''preferred lender arrangement'' as an arrangement or agreement between a creditor and a school under which the creditor provides loans to the school's students or their families, and the school recommends, promotes, or endorses the creditor's loans. HEOA, Title I, § 120 (adding Section 152 to the Higher Education Act). Thus, where a creditor and a covered educational institution have a preferred lender arrangement, a creditor's statement that a school did not endorse its loans would be misleading.

The Board proposes to exercise its authority under TILA section 105(a) to provide an exception to the co-branding prohibition for creditors that have preferred lender arrangements. As explained above, the Board believes that this provision is necessary and proper to assure an accurate and meaningful disclosure to consumers of the relationship between the creditor and the educational institution. Proposed § 226.39(b) would allow the creditor to refer to the covered educational institution, but would require that the creditor clearly and conspicuously disclose that the loan is not being offered or made by the educational institution, but rather by the creditor. The Board believes that a disclosure that the loan is provided by a creditor and not by the school would address consumer confusion about whether the loan was actually made by the school, or merely endorsed by the school.

The proposed requirement that creditors with preferred lender arrangements make a disclosure when referring to a school follows a prohibition on co-branding for preferred lenders contained in section 152 of the Higher Education Act, as added by the HEOA, which is similar to the newly added co-branding prohibition in TILA. Section 152 of the Higher Education Act prohibits a creditor in a preferred lender arrangement from making a reference to a covered educational institution in any way that implies that the loan is offered or made by such institution or organization instead of the creditor. HEOA, Title I, Section 120 (emphasis added) (adding Section 152(a)(2) to the Higher Education Act). Thus, proposed § 226.39(b) would reconcile the two co-branding prohibitions contained in the HEOA.

Proposed comment 39(a)–3.ii provides a model clause that creditors may use in complying with § 226.39(b). The creditor would be considered to have complied with § 226.39(b) if the creditor includes a clear and conspicuous statement, using the name of the creditor's loan or loan program, the creditor's name and the covered educational institution's name, that ''[Name of loan or loan program] is not being offered or made by [name of school], but by [name of creditor].''

The Board requests comment on whether creditors should be offered a safe harbor from the prohibition on co-branding, and, if so, whether an alternative safe harbor should be considered. The Board also requests comment on how the co-branding prohibition should apply to creditors with preferred lender arrangements with covered educational institutions. The Board also requests comment on whether there are other examples of marketing that should be included in the co-branding prohibition.

39(c) Consumer's Right To Accept

The HEOA provides consumers with a 30-day period following receipt of the approval disclosures in which to accept a private education loan. It also prohibits creditors from changing the rate or terms of the loan, except for changes based on adjustments to the index used for the loan, until the 30-day period has expired.

Proposed § 226.39(c) would implement the 30-day acceptance period for private educational loans. The 30-day period would begin following the consumer's receipt of the approval disclosures required in § 226.38(b).

Proposed comment 39(c)–1 would require creditors to provide at least 30 days from the date the consumer receives the disclosures required under § 226.38(b) for the consumer to accept a private education loan. It would also allow creditors to provide a longer period of time at the creditor's option. It would clarify that if the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed. The proposed comment would also clarify that the consumer may accept the loan at any time before the end of the 30 day period.

The HEOA does not specify the method by which the consumer may accept the terms of the loan. Proposed comment 39(c)–2 would allow the creditor to specify a method or methods by which acceptance may occur. The creditor may specify that acceptance be made orally or in writing or may permit either form of acceptance. The creditor may also allow the consumer to accept electronically, but may not make electronic acceptance the sole form of acceptance. The Board believes that not all consumers have access to electronic forms of communication and that a form of acceptance in addition to electronic communication is appropriate.

Proposed § 226.39(c)(2) would prohibit creditors from changing the terms of the loan, with a few specified exceptions, before the loan disbursement, or the expiration of the 30-day acceptance period if the consumer has not accepted the loan during that time.

The proposal differs slightly from the language used in the HEOA in order to provide creditors with certainty about the precise time period during which changes are prohibited. The HEOA prohibits the creditor from changing the terms of the loan prior to date of acceptance of the terms of the loan and consummation of the transaction. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(6)(B)). The literal language of the HEOA assumes that acceptance and consummation happen at the same time. As discussed in the section-by-section analysis under § 226.37, this may not always be the case. To ensure that consumers receive the benefit of the entire 30-day period in which to accept the loan, the Board proposes to prohibit creditors from changing the rate and

[7] *See* Joint Explanatory Statement of the Committee of Conference on H.R. 4137, Title X, Subtitle A, § 1011. The Conference Report states that the prohibition is not intended to prohibit a credit union whose name includes the name of a covered educational institution from using its own name in marketing its private education loans. In addition, it is not intended to prohibit states or institutions of higher education from using state seals, with appropriate authorization, in the marketing of state education loan products.

terms of the loan until the date of disbursement, if the consumer accepts within the 30-day period.

Proposed § 226.39(c)(2) would prohibit only those changes that would affect the rate or terms required to be disclosed under §§ 226.38(b) and (c). The Board interprets the prohibition on changes to the rate or terms of the loan to cover only the disclosed terms. The Board believes that changes to terms that are not required to be disclosed to the consumer are unlikely to affect the consumer's decision whether or not to accept a private education loan.

Proposed § 226.39(c)(2) would not prohibit changes based on adjustments to the index used for a loan, implementing TILA section 128(e)(6)(B). In addition, the Board would exercise its authority under TILA section 105(a) to make exceptions to effectuate the purposes of the statute to allow the creditor to make changes that will unequivocally benefit the consumer, similar to the rule for home-equity plans in § 226.5b(f)(3)(iv). For example, a creditor would be permitted to reduce the interest rate or lower the amount of a fee, so long as no other change that would not unequivocally benefit the consumer were made. The Board believes that allowing such changes would be in the interest of both the creditor and the consumer. The Board would also exercise its authority under TILA section 105(f) in permitting unequivocally beneficial changes by exempting creditors from HEOA's prohibition on making changes to the loan prior to the date of acceptance of the terms of the loan and consummation of the transaction. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(6)(B)). The Board believes that the prohibition in the HEOA may complicate the credit process and could unnecessarily increase costs for consumers and creditors who, for example, would otherwise have to repeat the application process in order to change the terms. The Board recognizes that financial sophistication among student consumers seeking private education loan may be lacking, and that the size and importance of the loan may be significant to the consumer. The Board believes, however, that consumer protection would not be undermined because the permissible change would have to ''unequivocally benefit the consumer.'' Consumers would not receive a meaningful benefit in the form of protection if the Board were to prevent creditors from altering the loan in a manner that unequivocally benefits the consumer. In addition, consumers would retain their right under HEOA to cancel the loan.

The HEOA prohibits changes to the loan's rate or terms made by the creditor. The proposal would not prohibit changes made in connection with accommodating a request by the consumer. Proposed § 226.39(c)(3) and proposed comment 39(c)–3 would allow creditors to change a loan's rate or terms in response to a request from a consumer. For example, a consumer may learn that his or her financial assistance package has changed and may wish to request a higher or lower principal amount. The creditor would be allowed, at its option, to make changes to the rate and terms of the loan in response to this request. The rule would not limit the changes that could be made. For example, the creditor may provide for a shorter repayment term as a condition of granting the consumer's request to borrow a lesser principal amount.

The Board believes that it is in the consumer's interest to be able to request changes to the rate or terms of the loan. The Board understands that it is common for students' financial assistance packages to change in a short time period for a variety of reasons, such as changes to the student's and family's financial situation or the availability of grants. Students whose financial assistance amount decreases after being approved for a private education loan face the problem of having insufficient funds for their education. Those whose financial assistance amount increases after their private education loan has been approved may end up borrowing, and paying interest and fees on, more than they require. Over-borrowing in the private education loan market can adversely affect a student's eligibility for federal student loans. With proposed § 226.39(c)(3) and comment 39(c)–3, the Board seeks to ensure that consumers retain the benefit of the 30-day acceptance period while also providing consumers with flexibility to move forward with a transaction with a creditor without having to cancel a loan, or loan offer, and expend time and money re-applying.

If the creditor chooses to modify the terms of the loan in response to a consumer's request, the creditor would need to provide a new set of approval disclosures under § 226.38(b) and provide the consumer with a new 30-day acceptance period under § 226.39(c). Because the consumer may accept at any time during the 30 day period, the Board does not believe that this will unduly inhibit consumers from proceeding with a loan modified in response a request. However, the Board requests comment on whether consumers should be allowed to accept loans before receiving the updated disclosures. The Board also requests comment on alternative means of ensuring that consumers retain the benefits of the 30-day acceptance period while providing them with flexibility in cases where the amount of private education loan funds a consumer needs changes.

The HEOA provides that the consumer has 30 days in which to accept the terms of a private education loan and consummate the transaction, and that the creditor may not change the rate and terms of the loan during this time. The statute does not explicitly state under what conditions, if any, a creditor could withdraw the loan offer or change the loan's terms in response to a change in a material condition of the loan. The Board believes that there may be limited instances where it would appropriate for a creditor to withdraw a loan offer prior to disbursement, such as if the creditor learns that the consumer or a co-signer has committed fraud in filling out the application. The Board also requests comment on whether there are other instances where a material condition of the loan offer is not met such that the creditor should be permitted to withdraw the offer or change the terms of the loan. For example, the creditor may approve the loan contingent upon the consumer maintaining full-time enrollment, but the consumer may ultimately only register as a part-time student. The Board also requests comment on whether it is operationally feasible to determine the existence of a change in a material circumstance by comparing the terms for which the consumer was actually approved with the terms for which the creditor would have approved the consumer (or whether the creditor would have denied the consumer's loan application), if the material circumstance was known to the creditor before the loan was approved.

39(d) Consumer's Right To Cancel

Proposed § 226.39(d) would provide the consumer with the right to cancel a private education loan without penalty until midnight of the third business day following receipt of the final disclosures required in § 226.38(c). It would also prohibit the creditor from disbursing any funds until the expiration of the three-business day period. The consumer's right to cancel would apply regardless of whether or not the consumer was legally obligated on the loan at the time that the final disclosures were provided.

Proposed comment 39(d)–1 would provide guidance on calculating the three-business day time period and on when a consumer's request to cancel would be considered timely. It would also clarify that the creditor would be allowed to provide a period of time longer than three business days in which the consumer may cancel, and that the creditor would be allowed to disburse funds after the minimum three-business day period so long as the creditor honored the consumer's later timely cancellation request. Proposed comment 39(d)–2 would provide guidance to creditors on specifying a method or methods by which the consumer may cancel the loan. The creditor would be permitted to require cancellation be communicated orally or in writing. The creditor would also be permitted to allow cancellation to be communicated electronically, but would not be permitted to require only electronic communication because the Board believes that not all consumers have access to electronic communication.

Proposed comment 39(d)–3 would clarify the requirement that the creditor allow cancellation without penalty. The prohibition would extend only to fees charged specifically for canceling the loan. The creditor would not be required to refund fees, such as an application fee, charged to consumers for loans that are not cancelled.

The Board requests comment on whether creditors should be required to accept cancellation requests until midnight, or whether they should be allowed to set a reasonable deadline for communicating cancellation on the third business day. The Board also requests comment on whether creditors should be allowed to provide for a longer period during which consumers may cancel the loan, and, if so, whether creditors should be allowed to disburse funds after the minimum three-business-day period.

39(e) Self-Certification Form

The HEOA requires that, before a creditor may consummate a private education loan, it obtain from the consumer a self-certification form. Proposed § 226.39(e) would implement this requirement. The HEOA requires that a creditor obtain the self-certification form only from consumers of private education loans intended for students attending an institution of higher education. HEOA, Title X, Subtitle B, Section 1021(a) (adding TILA Section 128(e)(3)). Thus, a self-certification form will not be required with respect to every covered educational institution, but only those that meet the definition of an institution of higher education in proposed § 226.37(b)(2). Moreover, proposed comment 39(e)–1 would clarify that the requirement applies even if the student is not currently attending an institution of higher education, but will use the loan proceeds for postsecondary educational expenses while attending such institution. For example, a creditor is required to obtain the form before consummating a private education loan provided to a high school senior for expenses to be incurred during the consumer's first year of college. At the same time, comment 39(e)–1 would clarify that the self-certification requirement would not apply to loans where the self-certification information would not be applicable, such as loans intended to consolidate existing education loans. The self-certification form provides the consumer with information about the student's education costs to be incurred in the future (such as the cost of attendance and the amount of financial aid available). Even if the student were still enrolled, the information on the self-certification form would not apply to a consolidation loan, because the consolidation loan would cover expenses the student paid in the past.

Section 155(a)(2) of the Higher Education Act of 1965, as added by the HEOA, provides that the form shall be made available to the consumer by the relevant institution of higher education. HEOA, Title X, Subtitle B, Sec. 1021(b). Although the HEOA requires that the creditor obtain the completed and signed self-certification form before consummating the loan, it does not specify that the creditor must obtain the form directly from the consumer. Proposed comment 39(e)–1 would allow the creditor to obtain the self-certification form either directly from the consumer or through the institution of higher education. Compliance with the self-certification requirement may be simplified for all parties if the educational institution is permitted to obtain the completed form from the consumer and forward it to the creditor. The consumer may find it easier to return the form to the educational institution as part of the institution's overall financial aid process. The creditor and educational institution may also find it easier to include the self-certification form as part of a larger package of information communicated by the institution to the creditor about the student's eligibility and cost of attendance.

Both Section 128(e)(3) of TILA and Section 155 of the Higher Education Act of 1965 provide that the self-certification form may be provided to the consumer in electronic form. Under Section 155 of the Higher Education Act of 1965, the Department of Education must develop the form and ensure that institutions of higher education make it available to consumers in written or electronic form. Because the form will be provided by educational institutions to consumers, the Board does not propose to impose consumer consent or other requirements on creditors in order to accept the form in electronic form. The self-certification form may also be signed by the consumer in electronic form. Under Section 155(a)(5) of the Higher Education Act of 1965, the Department of Education must provide a place on the form for the applicant's written or electronic signature. Proposed comment 39(e)–2 would provide that a consumer's electronic signature is considered valid if it meets the requirements promulgated by the Department of Education under Section 155(a)(5) of the Higher Education Act of 1965.

39(f) Provision of Information by Preferred Lenders

The HEOA requires that a creditor that has a preferred lender arrangement with a covered educational institution provide the educational institution annually, by a date determined by the Board in consultation with the Secretary of Education, with the information required to be disclosed on the model form developed by the Board for each type of private education loan the creditor plans to offer for the next award year (meaning the period from July 1 to June 30 of the following year). HEOA, Title X, Subtitle B, Section 1021(a)(adding TILA Section 128(e)(11)). The HEOA does not specify which of the model forms that the creditor should use. However, the approval and consummation forms contain transaction-specific data that cannot be known for the next year. Thus, the Board proposes to require that the creditor provide the general loan information required on the application form in § 226.38(a), rather than the transaction-specific information required in the approval and final disclosure forms.

After consultation with the Department of Education, the Board proposes to require that creditors provide information by January 1 of each year. Proposed § 226.39(f) would require that the creditor provide only the information about rates, terms and eligibility that are applicable to the creditor's specific loan products. The Board does not believe that educational institutions need the other information

required to be disclosed in § 226.38(a), such as information about the availability of federal student loans. In addition, the Board believes that educational institutions can perform their own calculations of the total cost of the creditors' loans and do not need the cost estimate disclosure required under § 226.38(a)(4). Comment 39(f)–1 would provide creditors with the flexibility to comply with this requirement by providing educational institutions with copies of their application disclosure forms if they choose, or to provide only the required information.

The Board requests comment on the appropriate date by which creditors must provide the required information and on what information should be required.

Appendix H—Closed-End Model Forms and Clauses

Appendix H to part 226 contains model forms, model clauses and sample forms applicable to closed-end loans. Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. The Board proposes to add several model and sample forms to Appendix H to part 226. The Board also proposes to add commentary to the model and sample forms in Appendix H to part 226, as discussed below.

Current model form H–2 contains boxes at the top of the form with disclosures in the following order: the annual percentage rate, the finance charge, the amount financed, and the total of payments. Proposed model forms H–19, and H–20 contain a similar box-style arrangement, but would reorder the disclosures as follows: the amount financed, the interest rate, the finance charge and the total of payments.[8] The proposed order reflects a progression of the disclosures that consumer testing indicates may enhance understanding of these terms: the consumer borrows the amount financed, is charged interest which, along with fees, yields a finance charge and a total of payments. While the proposed order may enhance consumer understanding in the context of private education loans, the Board recognizes that consumers may be accustomed to the current order from other loan contexts. The Board requests comment on whether it should maintain a uniform order for the disclosures, or whether it should adopt the proposed order for private education loans.

Permissible changes to the model and sample forms. The commentary to Appendices G and H to part 226 currently states that creditors may make certain changes in the format and content of the model forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability. *See* comment app. G and H–1. However, the Board proposes to adopt format requirements with respect to the model forms for disclosures applicable to private education loans, such as requiring certain disclosures be grouped together under specific headings. Proposed comment app. H–25.i would provide a list of acceptable changes to the model forms. Proposed comment app. H–25.ii would provide guidance on the design of the model forms that would not be required but would be encouraged.

The Board is also proposing sample forms H–21, H–22, and H–23 to illustrate various ways of adapting the model forms to the individual transactions described in the commentary to appendix H. The deletions and rearrangments shown relate only to the specific transactions described in proposed comments app. H–26, H–27, and H–28. As a result, the samples do not provide the general protection from civil liability provided by the model forms.

IV. Effective Date

The HEOA's amendments to TILA have various effective dates. The TILA amendments for which the Board is not required to issue regulations became effective on the date of the HEOA's enactment, August 14, 2008. HEOA Section 1003.

The Board is required to issue regulations for paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) and section 140(c) of TILA. The Board's regulations are to have an effective date not later than six months after their issuance. HEOA Section 1002. However, the HEOA's amendments to TILA for which the Board must issue regulations take effect on the earlier of the date on which the Board's regulations become effective or 18 months after the date of the HEOA's enactment. HEOA Section 1003. Consequently, the latest date at which the provisions of the HEOA described above could become effective is February 14, 2010. The Board requests comment on whether six months would be an appropriate implementation period for the proposed rules or whether the Board should specify a shorter implementation period.

In addition, TILA section 128(e)(5) requires the Board to develop model forms for the disclosures required under TILA section 128(e) within two years of the HEOA's date of enactment. The Board is proposing model forms along with this proposed rule. The Board is also proposing to issue a rule to implement TILA section 128(e)(11) which requires lenders to provide certain information to covered educational institutions with which they have preferred lender arrangements. The Board requests comment on whether the model forms and the rule implementing TILA section 128(e)(11) should be issued in final form at the same time as the other proposed rules.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve also proposes to extend for three years the current recordkeeping and disclosure requirements in connection with Regulation Z. The collection of information that is required by this proposed rule is found in 12 CFR part 226. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

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

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For open-end credit, creditors are required to, among other things, disclose information about the initial costs and terms and to provide periodic statements of account activity, notice of changes in terms, and statements of rights concerning billing error procedures. Regulation Z requires specific types of disclosures for credit and charge card accounts and home equity plans. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided

[8] The proposed disclosure of the interest rate and annual percentage rate is discussed in the section-by-section analysis in § 226.17.

prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Federal Reserve accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Federal Reserve that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the Federal Reserve-regulated institutions as: state member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority. The current total annual burden to comply with the provisions of Regulation Z is estimated to be 688,607 hours for the 1,138 Federal Reserve-regulated institutions [9] that are deemed to be respondents for the purposes of the PRA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Federal Reserve provides model forms, which are appended to the regulation.

The total estimated burden increase, as well as the estimates of the burden increase associated with each major section of the proposed rule as set forth below, represents averages for all respondents regulated by the Federal Reserve. The Federal Reserve expects that the amount of time required to implement each of the proposed changes for a given institution may vary based on the size and complexity of the respondent. Furthermore, the burden estimate for this rulemaking does not include the burden addressing changes to implement provisions of the Mortgage Disclosure Improvement Act of 2008 (MDIA), as announced in a separate proposed rulemaking (Docket No. R–1340).

As discussed in the preamble, the Federal Reserve proposes to add three new disclosures for private education loans, which must be given at different times in the loan origination process: (1) Application or Solicitation Disclosures (Section 226.38(a)) would require private educational lenders to provide on or with a solicitation or an application for a private education loan general information about the rate, fees, and loan terms, including an example of the total cost of the loan based on the maximum interest rate the creditor can charge. These disclosures must inform a prospective borrower of, among other things, the potential availability of federal student loans and the interest rates on those loans; (2) Approval Disclosures (Section 226.38(b)) would require the private educational lender to provide on or with any notice of approval a set of transaction-specific disclosures containing information about the rate, fees and other terms of the loan. The consumer has at least 30 days in which to accept the terms of the loan offered, and the private educational lender may not change the rate or terms of the loan, except for changes to the rate based on an index, during that time; and (3) Final Disclosures (Section 226.38(c)) would require the private educational lender to provide at least three business days prior to disbursing the loan funds an updated cost disclosure that is substantially similar to the form provided at approval. The consumer has three business days in which to cancel the loan and funds may not be disbursed until the three-day period has expired.

The proposed rule would impose a one-time increase in the total annual burden under Regulation Z for all respondents regulated by the Federal Reserve by 45,440 hours, from 688,607 to 734,047 hours. In addition, the Federal Reserve estimates that, on a continuing basis, the proposed requirements would increase the total annual burden by 231,474 hours from 688,607 to 920,081 hours.

The Federal Reserve estimates that 1,136 respondents [10] regulated by the Federal Reserve would take, on average, 40 hours (one business week) to update their systems to comply with the proposed disclosure requirements in Sections 226.38(a), 226.38(b), and 226.38(c). This one-time revision would increase the burden by 45,440 hours. In addition, the Federal Reserve estimates that, on a continuing basis, these respondents would take on average 1 hour (monthly) to comply with each of the proposed disclosure requirements in Sections 226.38(a) and 8 hours (monthly) to comply with the proposed disclosure requirements in Sections 226.38(b) and 226.38(c). The Federal Reserve estimates the annual burden to be 13,362 hours and 231,474, hours respectively.

To ease the burden and cost of complying with the proposed disclosures the Federal Reserve provided model forms for each of the three new disclosures: Appendix H–17 for the application or solicitation disclosures required in § 226.38(a), Appendix H–18 for the approval disclosures required in § 226.38(b), and Appendix H–19 for the final disclosures required in § 226.38(c).

The other federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority.[11] They may, but are not required to, use the Federal Reserve's burden estimation methodology. Using the Federal Reserve's method, the total current estimated annual burden for institutions regulated by the federal financial agencies, including Federal Reserve-supervised institutions, would be approximately 13,568,725 hours. The proposed rule would impose a one-time increase in the estimated annual burden for all institutions subject to Regulation Z by 688,000 hours to 14,256,725 hours. On a continuing basis the estimated total annual burden would increase by 3,508,800 hours from 13,568,725 to 17,077,525 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices. All covered institutions, of which there are approximately 17,200, potentially are affected by this collection of information, and thus are respondents for purposes of the PRA.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden

[9] The number of Federal Reserve-supervised respondents was obtained from numbers published in the Board of Governors of the Federal Reserve System 94th Annual Report 2007: 878 State member banks, 258 Branches & agencies of foreign banks, and 2 Commercial lending companies.

[10] 878 State member banks and 258 Branches & agencies of foreign banks.

[11] Appendix I to Part 226—Federal Enforcement Agencies of Regulation Z lists those federal agencies that enforce the regulation for particular classes of business. The federal financial agencies include: the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration. The federal non-financial agencies include: Department of Transportation, Packers and Stockyards Administration, Farm Credit Administration, and Federal Trade Commission.

of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collection of information should be sent to Michelle Shore, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 151–A, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed regulations cover certain banks, other depository institutions, and non-bank entities that extend private education loans to consumers. The Small Business Administration (SBA) establishes size standards that define which entities are small businesses for purposes of the RFA.[12]

The size standard to be considered a small business is: $175 million or less in assets for banks and other depository institutions; $25.5 million or less in annual revenues for flight training schools; and $7.0 million or less in annual revenues for all other non-bank entities that are likely to be subject to the proposed regulations. The Board requests public comment in the following areas.

A. Reasons for the Proposed Rule

Section 1002 of the HEOA requires the Board to prescribe regulations prohibiting creditors from co-branding and requiring creditors to make certain disclosures and perform related requirements when making private education loans. More specifically, the regulations must address, but are not limited to, the following aspects of sections 128 and 140 of the TILA: (i) prohibiting a creditor from marketing private education loans in any way that implies that the covered educational institution endorses the private education loans it offers; (ii) requiring a creditor to make certain disclosures to the consumer in an application (or solicitation without requiring an application), with the approval, and with the consummation of the private education loan; (iii) requiring the creditor to obtain from the consumer a self-certification form prior to consummation; (iv) allowing at least 30 days following receipt of the approval disclosure documents for the consumer to accept and consummate the loan, and prohibiting certain changes in rates and terms until either consummation or expiration of such period of time; and (v) requiring a three-day right to cancel following consummation and prohibiting disbursement of funds until the three-day period expires.

Moreover, section 1021(a)(5) of the HEOA requires the Board, in consultation with the Secretary of Education, to develop and issue model disclosure forms that may be used to comply with the amended section 128 of the TILA.

In addition, the regulations interpret certain definitions included in title X of the HEOA to clarify the meaning of terms used in section 1011(a) of the HEOA, including the definitions of private education loan, and covered educational institution. The HEOA does not require the Board to issue regulations to implement these definitions, but the proposed definitions are intended to clarify the required regulations pursuant to the Board's authority under section 105(a) of the TILA.

The Board is issuing the proposed regulations and model forms both to fulfill its statutory duty to implement the provisions of sections 1002 and 1021(a)(5) of the HEOA and, in the case of the definition interpretations, to better clarify the requirements under the aforementioned sections.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** above contains this information. The legal basis for the proposed regulations is section 1002 of the HEOA and section 105(a) of the TILA.

C. Description of Small Entities to Which the Regulation Applies

The proposed regulations would apply to any ''creditor'' as defined in Regulation Z (12 CFR 226.2(a)(17)) that extends a private education loan.

The total number of small entities likely to be affected by the proposal is unknown because the Board does not have data on the number of small creditors that make private education loans. The rule has broad applicability, applying to any creditor that makes loans expressly for postsecondary educational expenses, but excluding open-end credit, real estate-secured loans, and loans made, insured, or guaranteed by the federal government under title IV of the Higher Education Act of 1965. It could apply not only to depository institutions and finance companies, but also schools that meet the creditor definition and extend private education loans to their students.

The Board can, however, identify through data from Call Reports[13] approximate numbers of small depository institutions that could be subject to the proposed rules. Based on an average of data reported at quarter end between October 1, 2007 and September 30, 2008, approximately 4,481 banks, 401 thrifts, and 7,221 credit unions, totaling 12,103 institutions, would be considered small entities that are potentially subject to the proposed rule. The Board cannot identify the percentage of these small institutions that extend private education loans and thus would be subject to a rulemaking. However, because the proposed regulation would cover all private education loans regardless of their size or whether they are for multiple purposes, the Board believes a majority of the 12,103 institutions would be covered by this proposed rulemaking.

The Board is not aware of data that provides information regarding finance companies' size in terms of annual revenues, and therefore cannot identify with certainty the number of small finance companies that extend private education loans that would be subject to the proposed rule. However, the size standard for these companies is $7.0 million or less in annual revenues (rather than assets), and the Board believes the size standard for depository institutions—$175 million or less in asset size—is likely to provide a comparable estimate. A 2005 compilation of surveys conducted by the Board indicates that 211 finance companies have an asset size of $100 million or less, and an additional 36 finance companies have an asset size between $100 million and $1 billion. Thus, the Board estimates that there are no more than a total of 247 small finance companies. The Board is unable, however, to locate data demonstrating the number of these small finance

[12] *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[13] Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041), Thrift Financial Report (1313), and NCUA Call Reports (NCUA 5300).

companies that extend private education loans.

The proposed rule would also apply to covered educational institutions that extend private education loans to their students, including flight training schools. According to information on the Federal Aviation Administration Web site, there are approximately 588 flight training schools nationwide. The Board is unaware of data that shows how many of those flight training schools would be deemed small institutions and, of those small flight schools, how many extend private education loans.

The proposed rule would also apply to other types of postsecondary schools, including both accredited and unaccredited postsecondary schools. In order to calculate an estimate of small accredited postsecondary schools, the Board relied on data collected by the Department of Education through its Integrated Postsecondary Education Data System (IPEDS). The Board used IPEDS data showing the revenue of all schools that participate in the Department's financial aid programs for postsecondary students, all of which are accredited. According to this IPEDS data, the estimated number of small accredited postsecondary schools is 3,159.[14]

The Board is not aware of sources of data on either the number of non-accredited postsecondary schools nationwide or their revenues. However, based on estimates provided by several trade organizations representing for-profit postsecondary schools, the Board believes that the number of non-accredited for-profit schools is approximately three times the number of accredited for-profit schools. Based on the assumption that all non-accredited schools are for-profit institutions, and using the IPEDS data showing that there were approximately 2,600 accredited for-profit postsecondary schools in 2005, the Board estimates there are 7,800 non-accredited postsecondary schools nationwide.

In order to approximate how many of those 7,800 non-accredited postsecondary schools are small entities, the Board believes that available data on for-profit schools with programs less than two years is likely to provide the closest comparable data to that of non-accredited postsecondary schools. According to this data, approximately 95 percent of for-profit schools with programs less than two years—and therefore approximately 95 percent of non-accredited postsecondary schools—have $7 million or less in revenue.[15] Thus, the Board estimates that 7,410 non-accredited postsecondary schools qualify as small entities.[16]

With respect to both accredited and unaccredited postsecondary schools, the Board is not aware of a source of data regarding the number of these small institutions that extend private education loans. Anecdotal information and informal survey results from representatives of several state associations of for-profit schools produced conflicting results regarding how many small schools extend private education loans.

The Board invites comment regarding the number and type of small entities that would be affected by the proposed rule.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The compliance requirements of the proposed regulations are described in detail in the **SUPPLEMENTARY INFORMATION** above.

The proposed regulations generally prohibit a creditor from marketing private education loans in a way that implies that the covered educational institution endorses the private education loans it offers. A creditor would need to analyze the regulations, determine whether it is engaging in marketing private education loans, and establish procedures to ensure the marketing does not imply such endorsement.

The proposed regulations also generally require a creditor to make certain disclosures to the consumer on or with an application (or solicitation without requiring an application), with the approval, and with the consummation of the private education loan. The creditor is also required to obtain a self-certification form prior to consummation. The creditor must allow at least 30 days following the consumer's receipt of the approval disclosure documents for the consumer to accept the loan and must not change certain rates and terms until either consummation or expiration of such period of time. It also must provide a three-day right to cancel following consummation and is prohibited from disbursing funds until the three-day period expires. A creditor would need to analyze the regulations, determine when and to whom such notices must be given, and design, generate, and provide those notices in the appropriate circumstances. The creditor must also ensure the receipt of the self-certification form prior to consummation and that the applicable rates and terms do not change in the given period of time following the consumer's receipt of the approval disclosure documents.

The Board seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the proposed rule to small institutions.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed regulations. Pursuant to section 1021(a)(9) of the HEOA, the proposed disclosures given at the time of approval and before disbursement of the private education loan have been designed to prevent, to the extent possible, duplication with the existing disclosure requirements of the TILA. The Board seeks comment regarding any statutes or regulations, including state or local statutes or regulations that would duplicate, overlap, or conflict with the proposed regulations.

F. Discussion of Significant Alternatives

The steps the Board has taken to minimize the economic impact and compliance burden on small entities, including the factual, policy, and legal reasons for selecting any alternatives adopted and why certain alternatives were not accepted, are described in the in **SUPPLEMENTARY INFORMATION** above. The Board believes that these changes minimize the significant economic impact on small entities while still meeting the requirements of the HEOA.

The Board welcomes comments on any significant alternatives, consistent with section 1002 of the HEOA that would minimize the impact of the proposed regulations on small entities.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

[14] Of these small accredited postsecondary schools, 396 are public institutions, 678 are private not-for-profit institutions, and 2,085 are private for-profit institutions.

[15] This approximation is supported by similar estimates provided by representatives of several state associations of for-profit schools, who estimated that 90 to 95 percent of their institutions would qualify as small businesses.

[16] While the numbers of accredited and unaccredited postsecondary schools includes flight training schools, the Board could not locate sources of data that would prevent this overlap.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold arrows, and language that would be deleted is set off with bold brackets.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart A—General

2. Section 226.1 is amended by revising paragraph (b), redesignating paragraph (d)(6) as paragraph (d)(7), and adding new paragraph (d)(6) to read as follows:

§ 226.1 Authority, purpose, coverage, organization, enforcement and liability.

* * * * *

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling. ►The regulation also regulates certain practices of creditors who extend private education loans as defined in § 226.37(b)(5).◄

(d) * * *

►(6) Subpart F relates to private education loans. It contains rules on disclosures, limitations on changes in terms after approval, the right to cancel the loan, and limitations on co-branding in the marketing of private education loans.

[(6)**]**(7)◄

* * * * *

2. Section 226.2 is amended by revising paragraph (a)(6) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(6) *Business Day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of § 226.19(a)(1)(ii)►, § 226.19(a)(2),◄ **[**and**]** § 226.31, ►and §§ 226.37, 226.38, and 226.39,◄ the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

* * * * *

3. Section 226.3 is amended by revising paragraph (b) to read as follows:

§ 226.3 Exempt transactions.

* * * * *

(b) *Credit over $25,000 [not secured by real property or a dwelling].* An extension of credit **[**not secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer,**]** in which the amount financed exceeds $25,000 or in which there is an express written commitment to extend credit in excess of $25,000**[**.**]**►, unless the extension of credit is:

(1) Secured by real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(2) A private education loan as defined in § 226.37(b)(5).◄

* * * * *

Subpart C—Closed-End Credit

4. Section 226.17 is amended by revising paragraphs (a), (b), and (e) and removing paragraph (i) to read as follows:

§ 226.17 General disclosure requirements.

(a) *Form of disclosures.* (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.). The disclosures required by §§ 226.17(g), 226.19(b), and 226.24 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related [37] to the disclosures required under § 226.18 ►or § 226.38◄.[38] The itemization of the amount financed under § 226.18(c)(1) must be separate from the other disclosures under that section ►except for private education loan disclosures under § 226.38◄.

(2) ►Except for private education loans, t◄**[**T**]**he terms ''finance charge'' and ''annual percentage rate,'' when required to be disclosed under § 226.18(d) and (e) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under § 226.18(a). ►For private education loans, the term ''annual percentage rate,'' and the corresponding percentage rate must be less conspicuous than the term ''finance charge'' and corresponding amount under § 226.18(d), the interest rate under §§ 226.38(b)(1)(i) and (c)(1), and the notice of the right to cancel under § 226.38(c)(4).◄

(b) *Time of disclosures.* The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in § 226.19(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in § 226.19(b) and § 226.20(c). ►For private education loan transactions, special timing requirements are set forth in § 226.37(d).◄ In certain transactions involving mail or telephone orders or a series of sales, the timing of disclosures may be delayed in accordance with paragraphs (g) and (h) of this section.

* * * * *

(e) *Effect of subsequent events.* ►Except for the disclosures required in § 226.38(b), i◄**[**I**]**f a disclosure becomes inaccurate because of an event that occurs after the creditor delivers the

[37] The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number.

[38] The following disclosures may be made together with or separately from other required disclosures: The creditor's identity under § 226.18(a), the variable rate example under § 226.18(f)(1)(iv), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

required disclosures, the inaccuracy is not a violation of this regulation, although new disclosures may be required under paragraph (f) of this section, § 226.19, or § 226.20.

* * * * *

[(i) *Interim student credit extensions.* For each transaction involving an interim credit extension under a student credit program, the creditor need not make the following disclosures: the finance charge under § 226.18(d), the payment schedule under § 226.18(g), the total of payments under § 226.18(h), or the total sale price under § 226.18(j).]

* * * * *

5. A new Subpart F consisting of §§ 226.37, 226.38, and 226.39 are added to read as follows:

Subpart F—Special Rules for Private Education Loans

Sec.

226.37 Special Disclosure Requirements for Private Education Loans.
226.38 Content of Disclosures.
226.39 Limitations on Private Educational Loans.

►Subpart F—Special Rules for Private Education Loans

§ 226.37 Special Disclosure Requirements for Private Education Loans

(a) *Coverage.* The requirements of this subpart apply to private education loans as defined in § 226.37(b)(5).

(1) *Relation to other subparts in this part.* Except as otherwise specifically provided, the requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this Part.

(b) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *Covered educational institution* means:

(i) An educational institution that meets the definition of an institution of higher education, as defined in paragraph (b)(2) of this section, without regard to the institution's accreditation status; and

(ii) Includes an agent, officer, or employee of the institution of higher education.

(2) *Institution of higher education* has the same meaning as in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) and the implementing regulations published by the Department of Education.

(3) *Postsecondary educational expenses* means any of the expenses that are listed as part of the cost of attendance, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll), of a student at a covered educational institution. These expenses include tuition and fees, books, supplies, miscellaneous personal expenses, room and board, and an allowance for any loan fee, origination fee, or insurance premium charged to a student or parent for a loan incurred to cover the cost of the student's attendance.

(4) *Preferred lender arrangement* has the same meaning as in section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019).

(5) *Private education loan* means a loan that:

(i) Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*);

(ii) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends; and

(iii) Does not include open-end credit or any loan that is secured by real property or a dwelling.

(c) *Form of disclosures*—(1) *Clear and conspicuous.* The disclosures required by this subpart shall be made clearly and conspicuously.

(2) *Transaction disclosures.* (i) The disclosures required under §§ 226.38(b) and (c) shall be made in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under §§ 226.38(b) and (c), which include the disclosures required under § 226.18.

(ii) The disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 226.18(a), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

(iii) The term ''finance charge'' and corresponding amount, when required to be disclosed under § 226.18(d), and the interest rate required to be disclosed under §§ 226.38(b)(1)(i) and (c)(1), shall be more conspicuous than any other disclosure, except the creditor's identity under § 228.18(a).

(3) *Electronic disclosures.* The disclosures required under §§ 226.38(b) and (c) may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 *et seq.*). The disclosures required by § 226.38(a) may be provided to the consumer in electronic form on or with an application or solicitation provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The form required to be received under § 226.39(e) may be accepted by the creditor in electronic form as provided for in that section.

(d) *Timing of disclosures*—(1) *Application or solicitation disclosures.*

(i) The disclosures required by § 226.38(a) shall be provided on or with any application or solicitation. For purposes of this subpart, the term solicitation means an offer of credit that does not require the consumer to complete an application. A ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) is a solicitation for purposes of this section.

(ii) The creditor may, at its option, disclose orally the information in § 226.38(a) in a telephone application, or solicitation, initiated by the creditor. Alternatively, if the creditor does not disclose orally the information in § 226.38(a), the creditor must provide the disclosures or place them in the mail no later than three business days after the consumer requests the credit, except that, if the creditor provides or places in the mail the disclosures in § 226.38(b) no later than three business days after the consumer requests the credit, the creditor need not also provide the § 226.38(a) disclosures.

(iii) For a loan, other than open-end credit or any loan secured by real property or a dwelling, that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses, the creditor need not also provide § 226.38(a) disclosures.

(2) *Approval disclosures.* The creditor shall provide the disclosures required by § 226.38(b) before consummation on or with any notice of approval provided to the consumer. If the creditor mails notice of approval, the disclosures must be mailed with the notice. If the creditor communicates notice of approval by telephone, the creditor must mail the disclosures within three business days of providing the notice of approval. If the creditor communicates notice of approval electronically, the creditor may provide the disclosures in electronic form; otherwise the creditor must mail the disclosures within three business days of communicating the notice of approval.

(3) *Final disclosures.* The disclosures required by § 226.38(c) shall be provided after the consumer accepts the loan and at least three business days

prior to disbursing the private education loan funds.

(e) *Basis of disclosures and use of estimates*—(1) *Legal obligation.* Disclosures shall reflect the terms of the legal obligation between the parties.

(2) *Estimates.* If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

(f) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor must comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation.

(g) *Effect of subsequent events.* If a disclosure under § 226.38(c) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 226).

§ 226.38 Content of disclosures.

(a) *Application or solicitation disclosures.* A creditor shall provide the disclosures required under paragraph (a) of this section on or with a solicitation or an application for a private education loan.

(1) *Interest Rates.* (i) The interest rate or range of interest rates applicable to the loan and actually offered by the creditor at the time of application or solicitation. If the rate will depend, in part, on a later determination of the consumer's creditworthiness, a statement that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors, if applicable.

(ii) Whether the interest rates applicable to the loan are fixed or variable.

(iii) If the interest rate may increase after consummation of the transaction, any limitations on the interest rate adjustments, or lack thereof, and a statement that the consumer's actual rate could be higher or lower than the rates disclosed under paragraph (a)(1)(i) of this section, if applicable.

(iv) Whether a co-signer or guarantor is required and whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed.

(2) *Fees and Default or Late Payment Costs.* (i) An itemization of the fees or range of fees required to obtain the private education loan; and

(ii) Any applicable charges or fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) *Repayment Terms.* (i) The term of the loan.

(ii) Any payment deferral options, or, if the consumer does not have the option to defer payments, that fact.

(iii) For each payment deferral option applicable while the student is enrolled at a covered educational institution:

(A) whether interest will accrue during the deferral period; and

(B) if interest accrues, whether payment of interest may be deferred and added to the principal balance.

(4) *Cost estimates.* An example of the total cost of the loan over the life of the loan, calculated as the total of payments:

(i) using the maximum rate of interest and a principal amount of $10,000, or $5000 if the creditor only offers the loan for less than $10,000, plus the finance charges applicable to loans at the maximum rate of interest; and

(ii) calculated both for any option that allows for deferral of interest payments and for any option that does not allow for deferral of interest payments.

(5) *Eligibility.* Any age or school enrollment eligibility requirements relating to the consumer or co-signer, if applicable.

(6) *Alternatives to Private Education Loans.* (i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*);

(ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) and whether the rates are fixed or variable;

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the website of the U.S. Department of Education, including an appropriate website address; and

(iv) A statement that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form.

(7) *Rights of the Consumer.* (i) A statement that if the loan is approved, the consumer will have the right to accept the terms of the loan at any time within 30 calendar days following receipt of the approval disclosures in § 226.38(b).

(ii) A statement that except for changes based on adjustments to the index used to determine the rate for the loan, the rates and terms of the loan may not be changed by the creditor during the 30-day period described in paragraph (a)(7)(i) of this section.

(8) *Self-certification information.* A statement that, before the loan may be consummated, the consumer must obtain from the relevant institution of higher education the self-certification form required under § 226.39(e), and complete, sign and submit the form to the creditor, if applicable.

(b) *Approval disclosures.* On or with any notice of approval provided to the consumer, the creditor shall disclose to the consumer the information required under § 226.18 and the following information:

(1) *Interest Rate.* (i) The interest rate applicable to the loan.

(ii) Whether the interest rate is fixed or variable.

(iii) If the interest rate may increase after consummation of the transaction, any limitations on the rate adjustments, or lack thereof.

(2) *Fees and default or late payment costs.*

(i) An itemization of the fees or range of fees required to obtain the private education loan; and

(ii) Any applicable charges or fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) *Repayment terms.*

(i) The principal amount of the loan for which the consumer has been approved.

(ii) The term of the loan.

(iii) A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time.

(iv) Any payments required while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

(v) The amount of any unpaid interest that will accrue while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

(vi) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(vii) An estimate of the total amount of payments calculated based on:

(A) The interest rate applicable to the loan. Compliance with § 226.18(h) constitutes compliance with this requirement.

(B) The maximum possible rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 21%.

(C) If a maximum rate cannot be determined, the estimate of the total

amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed under § 226.38(b)(3)(vii)(A) is an estimate and will be higher if the applicable interest rate increases.

(viii) The maximum monthly payment based on the maximum rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 21%. If a maximum cannot be determined, a statement of that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

(4) *Alternatives to private education loans.* (i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*);

(ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), and whether the rates are fixed or variable; and

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the subject student attends, or at the website of the U.S. Department of Education, including an appropriate website address.

(5) *Rights of the consumer.* (i) A statement that the consumer has the right to accept the terms of the loan at any time within 30 calendar days following notice of loan approval. The disclosure must include the specific date on which the 30-day period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan, and indicate that the consumer may accept the terms of the loan until that date. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.

(ii) A statement that, except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the creditor during the period described in paragraph (b)(5)(i).

(c) *Final disclosures.* At least three business days prior to disbursing the loan funds, the creditor shall disclose to the consumer the information required by § 226.18 and the following information:

(1) *Interest rate.* Information required to be disclosed under §§ 226.38(b)(1).

(2) *Fees and default or late payment costs.* Information required to be disclosed under § 226.38(b)(2).

(3) *Repayment terms.* Information required to be disclosed under § 226.38(b)(3).

(4) *Cancellation right.* A statement that:

(i) the consumer has the right to cancel the loan, without penalty, at any time before the cancellation period under § 226.39(d) expires, and

(ii) loan proceeds will not be disbursed until after the cancellation period under § 226.39(d) expires. The statement must include the specific date on which the cancellation period expires and state that the consumer may cancel by that date. The statement must also specify the method or methods by which the consumer may cancel. The disclosures required by this paragraph (c)(4) must be made more conspicuous than any other disclosure required under this section, except for the finance charge, the interest rate, and the creditor's identity, which must be disclosed in accordance with the requirements of § 226.37(c)(2)(iii).

§ 226.39 Limitations on private educational loans.

(a) *Co-branding prohibited.* (1) Except as provided in paragraph (b) of this section, a creditor shall not use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered education institution endorses the creditor's loans.

(2) A creditor's marketing of private education loans does not imply that the covered education institution endorses the creditor's loans if the marketing includes a clear and conspicuous disclosure that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution.

(b) *Preferred lender arrangements.* If a creditor and a covered educational institution have entered into a preferred lender arrangement, as defined by § 226.37(b)(4), paragraph (a)(1) of this section does not apply if the private education loan marketing includes a clear and conspicuous disclosure that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor.

(c) *Consumer's right to accept.* (1) The consumer has the right to accept the terms of a private education loan at any time within 30 calendar days following the date on which the consumer receives the disclosures required under § 226.38(b).

(2) Except for changes based on adjustments to the index used for a loan, or changes that will unequivocally benefit the consumer, the rate and terms of the private education loan that are required to be disclosed under §§ 226.38(b) and (c) may not be changed by the creditor prior to the earlier of:

(i) the date of disbursement of the loan; or

(ii) the expiration of the 30 calendar day period described in paragraph (c)(1) of this section if the consumer has not accepted the loan within that time.

(3) Notwithstanding paragraph (c)(2) of this section, nothing in this section prevents the creditor from changing the rate or terms of the loan, at the creditor's option, in connection with accommodating a specific request by the consumer. For example, if the consumer requests a higher or lower principal amount of the loan following a change in the amount of the consumer's other available financial assistance, the creditor may, but need not, provide the requested principal amount and make any other changes to the rate or terms. If the consumer requests a change to the terms of the loan, the creditor shall provide the disclosures required under § 228.38(b)(2) for the new loan terms and shall provide the consumer with an additional 30 days to accept the new rates and terms of the loan, and shall not make changes to the rates and terms except as specified in paragraphs (c)(2) and (3) of this section.

(d) *Consumer's right to cancel.* The consumer may cancel a private education loan, without penalty, until midnight of the third business day following the date on which the consumer receives the disclosures required by § 226.38(c). No funds may be disbursed with respect to a private education loan until after the expiration of the three-business day period.

(e) *Self-certification form.* For a private education loan intended to be used for the postsecondary educational expenses of a student while the student is attending an institution of higher education, a creditor shall obtain from the consumer or the institution of higher education the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the consumer, in written or electronic form, before consummating the private education loan.

(f) *Provision of information by preferred lenders.* A creditor that has a preferred lender arrangement with a covered educational institution shall provide to the covered educational institution annually by the 1st day of January, the information required under

§§ 226.38(a)(1), (2), (3) and (5), for each type of private education loan that the lender plans to offer to consumers for students attending the covered educational institution for the period beginning July 1 and ending June 30 of the following year.◄

6. In Part 226, Appendix H is amended by adding new entries H–18 through H–23 to the table of contents at the beginning of the appendix, and adding new Forms H–18, H–19, H–20, H–21, H–22, and H–23.

Appendix H to Part 226—Closed-End Model Forms and Clauses

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►H–18 Private Education Loan Application and Solicitation Model Form
H–19 Private Education Loan Approval Model Form
H–20 Private Education Loan Final Model Form
H–21 Private Education Loan Application and Solicitation Sample
H–22 Private Education Loan Approval Sample
H–23 Private Education Loan Final Sample◄

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►H–18 Private Education Loan Application and Solicitation Model Form

BILLING CODE 6210–01–P

H-18 Private Education Loan Application and Solicitation Model Form

[Creditor Name]
[Creditor Address]

Rates & Loan Terms

Current Starting Interest Rates between:

% and %

Term of Loan:

[Applicable loan term or terms]

Your starting rate
[Description of how rate is determined, if applicable]

Maximum Interest Rate
Your interest rate **will vary with the market** based on the [Index] Rate (a publicly available interest rate we use to set the variable rate) but **[description of maximum rate or lack thereof]**. The rate can change [frequency of rate changes] and [description of limit on rate increase at any one time, or lack thereof].

Fees
[Itemization of fees]

Repayment Options & Sample Costs

In-School Repayment options (available while continuously enrolled in School)	**Sample Loan amount**	**Sample Interest Rate** (highest possible starting rate)	**Sample Total Paid** (over [term of loan], including fees)
1. **[REPAYMENT OPTION]** [Description]	$10,000.00	[Rate]	**[Total Cost]**
2. **[ADDITIONAL REPAYMENT OPTION]** [Description]	$10,000.00	[Rate]	**[Total Cost]**
3. **[ADDITIONAL REPAYMENT OPTION]** [Description]	$10,000.00	[Rate]	**[Total Cost]**

Federal Loan Alternatives

Loan program	**Current Interest Rates**	
PERKINS for Students	[Rate] fixed	
STAFFORD for Students	[Rate] fixed	Undergraduate subsidized
	[Rate] fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents	[Rate] fixed	Federal Family Education Loan
	[Rate] fixed	Federal Direct Loan

You may qualify for Federal education loans.
For additional information, **contact your school's financial aid office or the Department of Education at:**
federalstudentaid.ed.gov

Next Steps

1. **Find Out More About Other Loan Options.**
   Some schools have school-specific student loan benefits and terms not detailed on this form. Contact your school's financial aid office or visit the Department of Education's web site at federalstudentaid.ed.gov for more information about other loans.

2. **To Apply for this Loan, Complete the Application and the School Certification Form.**
   You may get the certification form from your school's financial aid office. If you are approved for this loan, the loan terms will be available for 30 days (terms will not change during this period, except the variable interest rate may change based on adjustments to the index).

REFERENCE NOTES

Variable Interest Rate
[Variable interest rate information, if applicable]

Eligibility Criteria
[Description of eligibility criteria]

About the Repayment Example
[Description of repayment example assumptions]

H-19 Private Education Loan Approval Model Form

BORROWER:
[Name]
[Address]

CREDITOR:
[Name]
[Address]

Loan Rates & Estimated Total Costs

Amount Financed	Interest Rate	Finance Charge	Total of Payments
The amount of credit provided to you or on your behalf.	Your current interest rate	The estimated dollar amount the credit will cost you.	The estimated amount you will have paid when you have made all payments.

YOUR RATE IS VARIABLE

[Description that rate varies and how it is determined, if applicable] For more information on this variable rate, see notes on next page.

Based on the current interest rate, your **[estimated] annual percentage rate (APR)**, which is the cost of your loan as a yearly rate, is **[APR]%.**

ITEMIZATION OF AMOUNT FINANCED

Total Amount Financed	

OTHER FEES

- [Itemization of fees]

Estimated Repayment Schedule & Terms

PAYMENT SCHEDULE [Loan Term]	[PAYMENT PERIOD, e.g. MONTHLY PAYMENTS] at [Interest Rate]% the current rate of your loan	at [Maximum Rate]% [Maximum rate description]
[Dates of deferment period, if applicable] deferment period	**No payment required** ($[Amount of accrued interest] in interest will accrue during this time)	**No payment required** (interest will accrue during this time)
[Payment due dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount]
[Payment due dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount]

◀ The estimated **Total of Payments** at [Maximum rate description] would be **$[total payment amount].**

Federal Loan Alternatives

Loan program	Current Interest Rates	
PERKINS for Students	[Rate] fixed	
STAFFORD for Students	[Rate] fixed	Undergraduate subsidized
	[Rate] fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents	[Rate] fixed	Federal Family Education Loan
	[Rate] fixed	Federal Direct Loan

You may qualify for Federal education loans.

For additional information, **contact your school's financial aid office or the Department of Education at:** federalstudentaid.ed.gov

Next Steps & Terms of Acceptance

This offer is good until:

[Date of acceptance deadline]

If you have not accepted by [Date of acceptance deadline] we may change the terms of this offer.

1. **Find Out More About Other Loan Options.**
Some schools have school-specific student loan benefits and terms not detailed on this form. Contact your school's financial aid office for more information.

2. **The Terms of this Loan Offer Are Good for 30 days.**
You have 30 days from the approval date to accept this offer. The terms of this offer will not change, except that the interest rate may vary with the market rate listed above. To accept the terms [Description of method of acceptance].

REFERENCE NOTES

[Variable] Interest Rate:

- [Variable rate information, if applicable] The interest rate may be higher or lower than your Annual Percentage Rate (APR) because the APR accounts for the Interest Rate and certain fees you must pay to obtain this loan, and whether you defer (postpone) payments while in school.
- [Description of limitations on rate increases, or lack thereof]
- [Description of effect of an increase]

Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

Repayment Options:

- [Description of deferment options, if applicable]

Prepayments:

- [Prepayment disclosure]

Security

- You are giving a security interest in [description, if applicable]

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

H-20 Private Education Loan Final Model Form

RIGHT TO CANCEL

You have a right to cancel this transaction, without penalty, by midnight on [Deadline for cancellation]. No funds will be disbursed to you or to your school until after this time. You may cancel by [Method of cancellation].

BORROWER:
[Name]
[Address]

CREDITOR:
[Name]
[Address]

Loan Rates & Estimated Total Costs

Amount Financed	Interest Rate	Finance Charge	Total of Payments
The amount of credit provided to you or on your behalf.	Your current interest rate	The estimated dollar amount the credit will cost you.	The estimated amount you will have paid when you have made all payments.

YOUR RATE IS VARIABLE

[Description that rate varies and how it is determined, if applicable] For more information on this variable rate, see notes on next page.

Based on the current interest rate, your **[estimated] annual percentage rate (APR)**, which is the cost of your loan as a yearly rate, is **[APR]%.**

ITEMIZATION OF AMOUNT FINANCED

Total Amount Financed	

OTHER FEES

- [Itemization of fees]

Estimated Repayment Schedule & Terms

PAYMENT SCHEDULE [Loan Term]	[PAYMENT PERIOD, e.g. MONTHLY PAYMENTS] at [Interest Rate]% the current rate of your loan	[PAYMENT PERIOD, e.g. MONTHLY PAYMENTS] at [Maximum Rate]% [Maximum rate description]
[Dates of deferment period, if applicable] deferment period	**No payment required** ($[Amount of accrued interest] in interest will accrue during this time)	**No payment required** (interest will accrue during this time)
[Payment due dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount]
[Payment due dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount]

The estimated **Total of Payments** at [Maximum rate description] would be **$[total payment amount].**

REFERENCE NOTES

[Variable] Interest Rate:

- [Variable rate information, if applicable] The interest rate may be higher or lower than your Annual Percentage Rate (APR) because the APR accounts for the Interest Rate and certain fees you must pay to obtain this loan, and whether you defer (postpone) payments while in school.
- [Description of limitations on rate increases, or lack thereof]
- [Description of effect of an increase]

Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

Repayment Options:

- [Description of deferment options, if applicable]

Prepayments:

- [Prepayment disclosure]

Security

- You are giving a security interest in [description, if applicable]

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

H-21 Private Education Loan Application and Solicitation Sample

First ABC Bank
12345 1st St
Anytown, CA 93120
(800) 555 - 5555

Rates & Loan Terms

Current Starting Interest Rates between:

7.375% and **17.375%**

Term of Loan:

amounts up to $20,000: **20 years**

amounts more than $20,000: **30 years**

Your starting rate

Your specific rate will be determined based upon your creditworthiness and other factors.

Maximum Interest Rate

Your interest rate **will vary with the market** based on the LIBOR Rate (a publicly available interest rate we use to set the variable rate) but **will never go above 25%.** The rate can change once a month and there is no limit on how much the rate can increase at one time.

Fees

Application Fee: $15. **Origination Fee:** The fees that we charge to make this loan range from 0% to 6%. **Late Charge:** 5% of the amount of the past due payment, or $25, whichever is greater. **Returned check charge:** up to $25.

Repayment Options & Sample Costs

In-School Repayment options (available while continuously enrolled in School)	Sample Loan amount	Sample Interest Rate (highest possible starting rate)	Sample Total Paid (over 20 years, including fees)
1. MAKE NO PAYMENTS Interest will be charged and added to your loan	$10,000.00	17.375%	**$67,780.47**
2. PAY THE INTEREST ONLY Defer payments on the principal amount	$10,000.00	17.375%	**$46,332.56**
3. MAKE FULL PAYMENTS Pay principal and interest	$10,000.00	17.375%	**$38,044.68**

See reference notes on next page for more information about this example.

Federal Loan Alternatives

Loan program	Current Interest Rates	
PERKINS for Students	5% fixed	
STAFFORD for Students	6% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents	8.5% fixed	Federal Family Education Loan
	7.9% fixed	Federal Direct Loan

You may qualify for Federal education loans.

For additional information, **contact your school's financial aid office or the Department of Education at:** federalstudentaid.ed.gov

Next Steps

1. **Find Out More About Other Loan Options.**
   Some schools have school-specific student loan benefits and terms not detailed on this form. Contact your school's financial aid office or visit the Department of Education's web site at federalstudentaid.ed.gov for more information about other loans.

2. **To Apply for this Loan, Complete the Application and the School Certification Form.**
   You may get the certification form from your school's financial aid office. If you are approved for this loan, the loan terms will be available for 30 days (terms will not change during this period, except the variable interest rate may change based on adjustments to the index).

REFERENCE NOTES

Variable Interest Rate

- This loan has a variable interest rate, that is based on a publicly available index, the London Interbank Offered Rate (LIBOR). Your rate will be calculated each month by adding a margin between 3% and 14% to the LIBOR.

Eligibility Criteria

Borrower

- Must be enrolled at an eligible school at least half-time
- Must be 18 years or older at the time of loan application.

Co-signers

- A co-signer is not required, but rates are typically higher without a co-signer
- Must be 18 years or older at the time of loan application.

More information about loan eligibility is available in your loan application and promissory note.

About the Repayment Example

The repayment example above is based on the highest starting rate currently available and associated fees. It assumes that the borrower remains in school for 4 years and has a 6 month grace period before beginning repayment. Repayment will last 20 years.

H-22 Private Education Loan Approval Sample

BORROWER:
Christopher Smith Jr.
1492 Columbus Way
Plymouth, MA 02360

CREDITOR:
First ABC Bank
12345 1st St
Anytown, CA 93120

Loan Rates & Estimated Total Costs

Amount Financed	Interest Rate	Finance Charge	Total of Payments
$10,000.00	7.375%	$15,506.74	$ 25,506.74
The amount of credit provided to you or on your behalf.	Your current interest rate	The estimated dollar amount the credit will cost you.	The estimated amount you will have paid when you have made all payments.

YOUR RATE IS VARIABLE

A variable rate means that your actual rate could be higher or lower than the interest rate indicated on this form, but will **never exceed a maximum of 25%.** The variable rate is calculated using a publicly available index. For more information on this variable rate, see notes on next page.

Based on the current interest rate, your **estimated annual percentage rate (APR)**, which is the cost of your loan as a yearly rate, is **7.059%.**

ITEMIZATION OF AMOUNT FINANCED

Loan Amount	$10,000.00
Lender Fee to make the loan (Origination Fee)	$0.00
Total Amount Financed	$10,000.00

OTHER FEES

- **Late Charge:** 5% of the amount of the past due payment, or $25, whichever is greater. **Returned check charge**: up to $25.

Estimated Repayment Schedule & Terms

PAYMENT SCHEDULE	MONTHLY PAYMENTS	
20 Year Loan Term	at 7.375% the current rate of your loan	at 25% the maximum rate possible with your loan
Sep 1, 2009 - Feb 28, 2014 deferment period	**No payment required** ($3,318.75 in interest will accrue during this time)	**No payment required** (interest will accrue during this time)
Mar 1, 2014 - Feb 28, 2034 239 monthly payments	$106.28	$445.87
Mar 1, 2034 1 monthly payment	$105.82	$452.76

◀ The estimated **Total of Payments** at the Maximum Rate of Interest would be **$107,015.69**

Federal Loan Alternatives

Loan program	Current Interest Rates	
PERKINS for Students	5% fixed	
STAFFORD for Students	6% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents	8.5% fixed	Federal Family Education Loan
	7.9% fixed	Federal Direct Loan

You may qualify for Federal education loans.

For additional information, **contact your school's financial aid office or the Department of Education at:**
federalstudentaid.ed.gov

Next Steps & Terms of Acceptance

This offer is good until:

January 21, 2009

If you have not accepted by January 21, 2009 we may change the terms of this offer.

1. **Find Out More About Other Loan Options.**
Some schools have school-specific student loan benefits and terms not detailed on this form. Contact your school's financial aid office for more information.

2. **The Terms of this Loan Offer Are Good for 30 days.**
You have 30 days from the approval date to accept this offer. The terms of this offer will not change, except that the interest rate may vary with the market rate listed above. To accept the terms, contact us at:

First ABC Bank
12345 1st St
Anytown, CA 93120
(800) 555 - 5555

REFERENCE NOTES

Variable Interest Rate:

- Your loan has a variable interest rate, that is based on a publicly available index, the London Interbank Offered Rate (LIBOR), which is currently 4.375%. Your rate is calculated each month by adding a margin of 3% to the LIBOR. The interest rate may be higher or lower than your Annual Percentage Rate (APR) because the APR accounts for the Interest Rate and certain fees you must pay to obtain this loan, and whether you defer (postpone) payments while in school.
- The rate will not increase more than once a month, but there is no limit on the amount that the rate could increase at one time. Your rate will never exceed 25%.
- Any increase will take the form of higher monthly payments.

Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

Repayment Options:

- Although you elected to defer (postpone) payments, you can still make payments during this time. You can also choose to change your deferment choice to: Pay Interest Only or Make Full Payments.

Prepayments:

- If you pay off early, you will not have to pay a penalty. You will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

H-23 Private Education Loan Final Sample

RIGHT TO CANCEL

You have a right to cancel this transaction, without penalty, by midnight on January 20, 2009. No funds will be disbursed to you or to your school until after this time. You may cancel by calling us at 800-555-5555.

BORROWER:
Christopher Smith Jr.
1492 Columbus Way
Plymouth, MA 02360

CREDITOR:
First ABC Bank
12345 1st St
Anytown, CA 93120
(800) 555 - 5555

Loan Rates & Estimated Total Costs

Amount Financed	Interest Rate	Finance Charge	Total of Payments
$10,000.00	7.375%	$15,506.74	$ 25,506.74
The amount of credit provided to you or on your behalf.	Your current interest rate	The estimated dollar amount the credit will cost you.	The estimated amount you will have paid when you have made all payments.

YOUR RATE IS VARIABLE

A variable rate means that your actual rate could be higher or lower than the interest rate indicated on this form. There is **no maximum rate**. The variable rate is calculated using a publicly available index. For more information on this variable rate, see notes on next page.

Based on the current interest rate, your **estimated annual percentage rate (APR)**, which is the cost of your loan as a yearly rate, is **7.059%.**

ITEMIZATION OF AMOUNT FINANCED

Loan Amount	$10,000.00
Lender Fee to make the loan (Origination Fee)	$0.00
Total Amount Financed	$10,000.00

OTHER FEES

- **Late Charge:** 5% of the amount of the past due payment, or $25, whichever is greater. **Returned check charge**: up to $25.

Estimated Repayment Schedule & Terms

PAYMENT SCHEDULE	MONTHLY PAYMENTS	
20 Year Loan Term	**at 7.375%** the current rate of your loan	**at 21%** Your loan has no maximum rate. Your payments will be higher if the rate increases above 21%.
Sep 1, 2009 - Feb 28, 2014 deferment period	**No payment required** ($3,318.75 in interest will accrue during this time)	**No payment required** (interest will accrue during this time)
Mar 1, 2014 - Feb 28, 2034 239 monthly payments	$106.28	$345.75
Mar 1, 2034 1 monthly payment	$105.82	$353.14

◀ The estimated **Total of Payments** if your rate rises to 21% would be **$82,987.39**. Your Total of Payments will be higher if rate increases above 21%.

REFERENCE NOTES

Variable Interest Rate:

- Your loan has a variable interest rate, that is based on a publicly available index, the London Interbank Offered Rate (LIBOR), which is currently 4.375%. Your rate is calculated each month by adding a margin of 3% to the LIBOR. The interest rate may be higher or lower than your Annual Percentage Rate (APR) because the APR accounts for the Interest Rate and certain fees you must pay to obtain this loan, and whether you defer (postpone) payments while in school.
- The rate will not increase more than once a month, but there is no limit on the amount that the rate could increase at one time. Your loan has no maximum rate.
- Any increase will take the form of higher monthly payments.

Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

Repayment Options:

- Although you elected to defer (postpone) payments, you can still make payments during this time. You can also choose to change your deferment choice to: Pay Interest Only or Make Full Payments.

Prepayments:

- If you pay off early, you will not have to pay a penalty. You will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

7. In Supplement I to Part 226:

a. Under *Section 226.2—Definitions and Rules of Construction, 2(a) Definitions, 2(a)(6) Business day,* paragraph 2(a)(6)–2 is revised.

b. Under *Section 226.3—Exempt Transactions,* the heading to *3(b) Credit Over $25,000 Not Secured by Real Property or a Dwelling,* and *3(f) Student Loan Programs,* are revised.

c. Under *Section 226.17—General Disclosure Requirements,* under *17(a) Form of Disclosures,* paragraphs (17)(a)(1)–4, (17)(a)(1)–6, (a)(2) and *17(b) Time of Disclosures,* are revised, and *17(i) Interim Student Credit Extensions, is removed.*

d. Under *Section 226.18—Content of Disclosures, Paragraph 18(f)(1)(ii), Paragraph 18(f)(1)(iv)–2,* and *Paragraph 18(k)(1)* are revised.

e. A new *Subpart F—Special Rules for Private Student Loans* is added, and new *Section 226.37—Requirements for Private Student Loans, Section 226.38—Content of Disclosures,* and *Section 226.39—Limitations on Private Educational Loans* are added.

f. Under the heading, *Appendixes G and H—Open-End and Closed-End Model Forms and Clauses, paragraph 1.* is revised.

g. Under *Appendix H—Closed-End Model Forms and Clauses,* paragraphs 21 through 24 are revised, and paragraphs 25 through 28 are revised.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

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Section 226.2—Definitions and Rules of Construction

2(a) Definitions

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2(a)(6) Business day.

* * * * *

2. [Rescission rule]► Rule for rescission, disclosures for certain mortgage transactions, and private education loans◄. A more precise rule for what is a business day (all calendar days except Sundays and the federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission [or]►,◄ the receipt of disclosures for certain ►dwelling-secured◄ mortgage transactions under §§ 226.19(a)(1)(ii), ►226.19(a)(2),◄ [or mortgages subject to § 226.32 are] 226.31(c) ►, or the receipt of disclosures and the right to cancel private education loans under §§ 226.37, 226.38, and 226.39 is◄ involved. [(See also comment 31(c)(1)–1.)] Four federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, federal offices and other entities might observe the holiday on the preceding Friday (July 3). [The]►In cases where the more precise rule applies, the◄ observed holiday (in the example, July 3) is a business day [for purposes of rescission or the delivery of disclosures for certain high-cost mortgages covered by § 226.32].

* * * * *

Section 226.3—Exempt Transactions

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3(b) Credit Over $25,000 [Not Secured by Real Property or a Dwelling]

* * * * *

3(f) Student Loan Programs

1. *Coverage.* This exemption applies to [the Guaranteed Student Loan program (administered by the Federal government, State, and private non-profit agencies), the Auxiliary Loans to Assist Students (also known as PLUS) program, and the National Direct Student Loan program.] ►loans made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*). This exemption does not apply to private education loans as defined by § 226.37(b)(5).◄

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Subpart C—Closed-End Credit

Section 226.17—General Disclosure Requirements

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17(a) Form of Disclosures

Paragraph 17(a)(1)

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4. *Content of segregated disclosures.* Footnotes 37 and 38 contain exceptions to the requirement that the disclosures under § 226.18 be segregated from material that is not directly related to those disclosures. Footnote 37 lists the items that may be added to the segregated disclosures, even though not directly related to those disclosures. Footnote 38 lists the items required under § 226.18 that may be deleted from the segregated disclosures and appear elsewhere. Any one or more of these additions or deletions may be combined and appear either together with or separate from the segregated disclosures. The itemization of the amount financed under § 226.18(c), however, must be separate from the other segregated disclosures under § 226.18►, except for private education loan disclosures under § 226.38◄. If a creditor chooses to include the security interest charges required to be itemized under § 226.4(e) and § 226.18(o) in the amount financed itemization, it need not list these charges elsewhere.

* * * * *

6. *Multiple-purpose forms.* The creditor may design a disclosure statement that can be used for more than one type of transaction, so long as the required disclosures for individual transactions are clear and conspicuous. (See the Commentary to appendices G and H for a discussion of the treatment of disclosures that do not apply to specific transactions.) Any disclosure listed in § 226.18 (except the itemization of the amount financed under § 226.18(c) ►for transactions other than private education loans◄) may be included on a standard disclosure statement even though not all of the creditor's transactions include those features. For example, the statement may include:

- The variable rate disclosure under § 226.18(f).
- The demand feature disclosure under § 226.18(i).
- A reference to the possibility of a security interest arising from a spreader clause, under § 226.18(m).
- The assumption policy disclosure under § 226.18(q).
- The required deposit disclosure under § 226.18(r).

* * * * *

Paragraph 17(a)(2)

1. *When disclosures must be more conspicuous.* The following rules apply to the requirement that the terms ''annual percentage rate'' ►(except for private education loans)◄ and ''finance charge'' be shown more conspicuously:

- The terms must be more conspicuous only in relation to the other required disclosures under § 226.18. For example, when the disclosures are included on the contract document, those two terms need not be more conspicuous as compared to the heading on the contract document or information required by state law.
- The terms need not be more conspicuous except as part of the finance charge and annual percentage rate disclosures under § 226.18(d) and (e), although they may, at the creditor's option, be highlighted wherever used in the required disclosures. For example, the terms may, but need not, be highlighted when used in disclosing a prepayment penalty under § 226.18(k) or a required deposit under § 226.18(r).
- The creditor's identity under § 226.18(a) may, but need not, be more prominently displayed than the finance charge and annual percentage rate.
- The terms need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs)

2. *Making disclosures more conspicuous.* The terms ''finance charge'' and ►(except for private education loans)◄ ''annual percentage rate'' may be made more conspicuous in any way that highlights them in relation to the other required disclosures. For example, they may be:

- Capitalized when other disclosures are printed in capital and lower case.
- Printed in larger type, bold print or different type face.
- Printed in a contrasting color.
- Underlined.
- Set off with asterisks.

17(b) Time of Disclosures

1. *Consummation.* As a general rule, disclosures must be made before ''consummation'' of the transaction. The disclosures need not be given by any particular time before consummation, except in certain mortgage transactions and variable-rate transactions secured by the consumer's principal dwelling with a term greater than one year under § 226.19►, and in private education loan transactions under §§ 226.37 and 226.38◄. (See the commentary to

§ 226.2(a)(13) regarding the definition of consummation.)

* * * * *

17(i) Interim Student Credit Extensions

1. *Definition.* Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. These plans include loans made under any student credit plan, whether government or private, where the repayment period does not begin immediately. (Certain student credit plans that meet this definition are exempt from Regulation Z. See § 226.3(f).) Creditors in interim student credit extensions need not disclose the terms set forth in this paragraph at the time the credit is actually extended but must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under § 226.18.

2. *Basis of disclosures.* The disclosures given at the time of execution of the interim note should reflect two annual percentage rates, one for the interim period and one for the repayment period. The use of § 226.17(i) in making disclosures does not, by itself, make those disclosures estimates. Any portion of the finance charge, such as statutory interest, that is attributable to the interim period and is paid by the student (either as a prepaid finance charge, periodically during the interim period, in one payment at the end of the interim period, or capitalized at the beginning of the repayment period) must be reflected in the interim annual percentage rate. Interest subsidies, such as payments made by either a state or the Federal government on an interim loan, must be excluded in computing the annual percentage rate on the interim obligation, when the consumer has no contingent liability for payment of those amounts. Any finance charges that are paid separately by the student at the outset or withheld from the proceeds of the loan are prepaid finance charges. An example of this type of charge is the loan guarantee fee. The sum of the prepaid finance charges is deducted from the loan proceeds to determine the amount financed and included in the calculation of the finance charge.

3. *Consolidation.* Consolidation of the interim student credit extensions through a renewal note with a set repayment schedule is treated as a new transaction with disclosures made as they would be for a refinancing. Any unearned portion of the finance charge must be reflected in the new finance charge and annual percentage rate, and is not added to the new amount financed. In itemizing the amount financed under § 226.18(c), the creditor may combine the principal balances remaining on the interim extensions at the time of consolidation and categorize them as the amount paid on the consumer's account.

4. *Approved student credit forms.* See the commentary to appendix H regarding disclosure forms approved for use in certain student credit programs.]

* * * * *

Section 226.18—Content of Disclosures

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Paragraph 18(f)(1)(ii)

1. *Limitations.* This includes any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the life of the transaction. ►Except for private education loans disclosures, ◄[W]►w◄hen there are no limitations, the creditor may, but need not, disclose that fact[. L]►, and l◄imitations do not include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations. (See § 226.30 for the rule requiring that a maximum interest rate be included in certain variable-rate transactions.) ►For limitations with respect to private education loan disclosures, see comment 38(b)(1)–2.◄

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Paragraph 18(f)(1)(iv)

* * * * *

2. *Hypothetical example not required.* The creditor need not provide a hypothetical example in the following transactions with a variable-rate feature:

- Demand obligations with no alternate maturity date.
- [Interim student credit extensions]►Private education loans as defined in § 226.37(b)(5)◄.
- Multiple-advance construction loans disclosed pursuant to appendix D, Part I.

* * * * *

Paragraph 18(k)(1)

1. *Penalty.* This applies only to those transactions in which the interest calculation takes account of all scheduled reductions in principal, as well as transactions in which interest calculations are made daily. The term penalty as used here encompasses only those charges that are assessed strictly because of the prepayment in full of a simple-interest obligation, as an addition to all other amounts. Items which are penalties include, for example:

- Interest charges for any period after prepayment in full is made. (See the commentary to § 226.17(a)(1) regarding disclosure of interest charges assessed for periods after prepayment in full as directly related information.)
- A minimum finance charge in a simple-interest transaction. (See the commentary to § 226.17(a)(1) regarding the disclosure of a minimum finance charge as directly related information.) Items which are not penalties include, for example[:
- L]►, l◄oan guarantee fees►.◄
- [• Interim interest on a student loan]

* * * * *

Subpart F—Special Rules for Private Education Loans

Section 226.37—Special Disclosure Requirements for Private Education Loans

37(b) Definitions

37(b)(1) Covered educational institution.

1. *General.* A covered educational institution includes any educational institution that meets the definition of an institution of higher education in § 226.37(b)(2). An institution is also a covered educational institution if it otherwise meets the definition of an institution of higher education, except for its lack of accreditation. Such an institution may include, for example, a university or community college. It may also include an institution, whether accredited or unaccredited, offering instruction to prepare students for gainful employment in a recognized profession, such as flying, culinary arts, or dental assistance. A covered educational institution does not include elementary or secondary schools.

2. *Agent.* For purposes of § 226.37(b)(1), the term agent means an officer or employee of an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C 1019). Under section 151 of the Higher Education Act, an institution-affiliated organization means any organization that is directly or indirectly related to a covered institution and is engaged in the practice of recommending, promoting, or endorsing education loans for students attending the covered institution or the families of such students. An institution-affiliated organization may include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution, but does not include any creditor with respect to any private education loan made by that creditor.

37(b)(2) Institution of higher education.

1. *General.* An institution of higher education includes any institution that meets the definitions contained in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) and implementing Department of Education regulations (34 CFR 600). Such an institution may include, for example, a university or community college. It may also include an institution offering instruction to prepare students for gainful employment in a recognized profession, such as flying, culinary arts, or dental assistance. An institution of higher education does not include elementary or secondary schools.

37(b)(3) Postsecondary educational expenses.

1. *General.* The examples listed in § 226.37(b)(3) are illustrative only. The full list of postsecondary educational expenses is contained in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll).

37(b)(4) Preferred lender arrangement.

1. *General.* The term ''preferred lender arrangement'' is defined in section 151 of the Higher Education Act of 1965 (20 U.S.C 1019). The term refers to an arrangement or agreement between a creditor and a covered educational institution (or an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C 1019)) under which a creditor provides private education loans to consumers for students attending the covered educational institution and the covered educational institution recommends, promotes, or endorses the private education loan products of the creditor. It does not include arrangements or agreements with respect to Federal Direct Stafford/Ford loans, or Federal PLUS loans made under the Federal PLUS auction pilot program.

37(b)(5) Private education loan.

1. *Extended expressly for postsecondary educational expenses.* A private education loan is one that is extended expressly for postsecondary educational expenses. The term includes loans extended for postsecondary educational expenses incurred while a student is enrolled in a covered educational institution as well as loans extended to consolidate a consumer's pre-existing private education loans.

2. *Multiple-purpose loans.* For a loan, other than open-end credit or any loan secured by real property or a dwelling, that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses, the creditor need not provide the disclosures required by § 226.38(a) on or with the application or solicitation. *See* § 226.38(d)(1)(i). However, if the consumer expressly indicates that the proceeds of the loan will be used to pay for postsecondary educational expenses by indicating the loan's purpose on an application, the creditor must comply with §§ 226.38(b) and (c) and § 226.39. The creditor may rely on a check-box, or a purpose line, on a loan application to determine whether or not the applicant intends to use loan proceeds for postsecondary educational expenses. For purposes of the required disclosures, the creditor must base the disclosures on the entire amount of the loan, even if only a part of the proceeds is intended for postsecondary educational expenses.

37(c) Form of Disclosures

1. *Form of disclosures—relation to other sections.* Creditors must make the disclosures required under this subpart in accordance with § 226.37(c)(1). To comply with the requirement under §§ 226.38(b) and (c) that private education lenders disclose the information required under § 226.18, as well as the requirement that the disclosures be grouped together and segregated from everything else, creditors may follow the rules in § 226.17, except where specifically provided otherwise. Although § 226.17(b) requires creditors to provide only one set of disclosures before consummation of the transaction, §§ 226.38(b) and (c) require that the creditor provide the disclosures under § 226.18 both upon approval and prior to disbursing the loan.

Paragraph 37(c)(3)

1. *Application and solicitation disclosures—electronic disclosures.* If the disclosures required under § 226.38(a) are provided electronically, they must be provided on or with the application or solicitation reply form. Electronic disclosures are deemed to be on or with an application or solicitation if they meet one of the following conditions:

i. They automatically appear on the screen when the application or solicitation reply form appears;

ii. They are located on the same Web ''page'' as the application or solicitation reply form without necessarily appearing on the initial screen, if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable; or

iii. They are posted on a Web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by-passing the disclosures before submitting the application or reply form.

37(d) Timing of Disclosures

1. *Providing disclosures.* Disclosures are considered provided when received by the consumer. If the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed. For purposes of §§ 226.37, 226.38, and 226.39, ''business day'' means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 2(a)(6)–2. For example, if the creditor places the disclosures in the mail on Thursday, June 4, the disclosures are considered received on Monday, June 8.

Paragraph 37(d)(1)

1. *Invitations to apply.* A creditor may contact a consumer who has not been preapproved for a private educational loan about taking out a loan (whether by direct mail, telephone, or other means) and invite the consumer to complete an application. Such a contact does not meet the definition of solicitation, nor is it covered by this subpart, unless the contact itself includes the following:

i. An application form in a direct mailing, electronic communication or a single application form as a ''take-one'' (in racks in public locations, for example);

ii. An oral application in a telephone contact initiated by the creditor; or

iii. An application in an in-person contact initiated by the creditor.

Paragraph 37(d)(2)

1. *Timing.* The creditor must provide the disclosures required by § 226.38(b) at the time the creditor provides to the consumer any notice that the loan has been approved. If the creditor communicates notice of approval to the consumer by mail, the disclosures must be mailed at the same time as the notice of approval. If the creditor communicates notice of approval by telephone, the creditor must place the disclosures in the mail within three business days of the notice of approval. If the creditor communicates notice of approval in electronic form, the creditor may provide the disclosures in electronic form if the creditor has complied with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 et seq.); otherwise, the creditor must place the disclosures in the mail within three business days of the communication. For purposes of § 226.37(d), the more precise definition of business day (meaning all calendar days except Sundays and specified federal holidays) applies. *See* comment 2(a)(6)–2.

37(g) Effect of Subsequent Events

1. Inaccuracies in the disclosures required under § 226.38(c) are not violations if attributable to events occurring after disclosures are made. For example, if the consumer initially chooses to defer payment of principal and interest while enrolled in a covered educational institution, but later chooses to make payments while enrolled, such a change does not make the original disclosures inaccurate.

Section 226.38—Content of Disclosures

1. *As applicable.* The disclosures required by this subpart need be made only as applicable, unless specifically required otherwise. The creditor need not provide any disclosure that is not applicable to a particular transaction. For example, in a transaction consolidating private education loans, the creditor need not disclose the information under §§ 226.38(a)(6), and (b)(4), and any other information otherwise required to be disclosed under this subpart that is not applicable to the loan consolidation transaction.

38(a) Application or Solicitation Disclosures

Paragraph 38(a)(1)(i)

1. *Rates actually offered.* The disclosure may state only those rates that the creditor is actually prepared to offer. For example, a creditor may not disclose a very low interest rate that will not in fact be offered at any time. For a loan with variable interest rates, the ranges of rates will be considered actually offered if:

i. For disclosures in applications or solicitations sent by direct mail, the rates were in effect within 60 days before mailing;

ii. For disclosures in applications or solicitations in electronic form, the rates were in effect within 30 days before the disclosures are sent to a consumer's e-mail address, or for disclosures made on an Internet Web site, when viewed by the public;

iii. For disclosures in printed applications or solicitations made available to the general public, the rates were in effect within 30 days before printing; or

iv. For disclosures provided orally in telephone applications or solicitations, the rates are currently applicable at the time the disclosures are provided.

2. *Creditworthiness and other factors.* If the rate will depend, at least in part, on a later determination of the consumer's creditworthiness, the disclosure must include a statement that the rate for which the consumer may qualify at approval will depend on the consumer's creditworthiness and other factors, if applicable. The creditor is not required to list the factors that it will use to determine the interest rate. For example, if the creditor will determine the interest rate based on information in the consumer's credit report and the type of school the consumer attends, the creditor may state, ''Your interest rate will be based on your creditworthiness and other factors.''

Paragraph 38(a)(1)(iii)

1. *Coverage.* The requirements of section 226.38(a)(1)(iii) apply to all transactions in which the terms of the legal obligation allow the creditor to increase the interest rate originally disclosed to the consumer. The provisions do not apply to increases resulting from delinquency (including late payment), default, assumption, or acceleration.

2. *Limitations.* The creditor must disclose any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the life of the transaction. When there are no limitations, the creditor must disclose that fact. Limitations include legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations. However, if a rate limitation in the form of a legal limit applies (rather than a numerical rate limitation in the legal obligation between the parties) the creditor must disclose that the maximum rate is determined by applicable law and may change. The creditor must also disclose that the consumer's actual rate may be higher or lower than the initial rates disclosed under § 226.38(a)(1)(i), if applicable.

Paragraph 38(a)(1)(iv)

1. *Co-signer or guarantor—changes in applicable interest rate.* The creditor must disclose whether a co-signer or guarantor is required to obtain the loan. The creditor must also state whether the interest rate typically will be higher if the loan is not co-signed or guaranteed by a third party. The creditor is required to provide only a statement of the effect on the interest rate and is not required to provide a numerical estimate of the effect on the interest rate. For example, a creditor may state: ''Rates are typically higher without a co-signer.''

38(a)(2) Fees and Default or Late Payment Costs.

1. *Fees or range of fees.* The creditor must itemize fees required to obtain the private education loan. The creditor must give a single dollar amount for each fee, unless the fee is based on a percentage, in which case the percentage must be stated. If the exact amount of the fee is not known at the time of disclosure, the creditor may disclose the dollar amount or percentage for each fee as an estimated range.

2. *Fees required to obtain the private education loan.* The creditor must itemize the fees that the consumer must pay to obtain the private education loan. Fees disclosed include finance charges under § 226.4, such as loan origination fees and credit report fees, as well as fees not considered finance charges but required to obtain credit, such as application fees that are charged whether or not credit is extended. Fees disclosed include those paid by the consumer directly to the creditor and fees paid to third parties by the creditor on the consumer's behalf. Fees disclosed do not include those that apply if the consumer exercises an option after consummation under the agreement or promissory note for the private educational loan, such as fees for exercising deferment, forbearance, or loan modification options.

38(a)(3) Repayment Terms.

1. *Loan term.* The term of the loan is the maximum period of time during which regularly scheduled payments of principal and interest will be due on the loan.

2. *Payment deferral options—general.* The creditor must describe the options that the consumer has under the private education loan agreement to defer payment on the loan. When there is no deferment option provided for the loan, the creditor must disclose that fact. Payment deferral options required to be disclosed include options for immediate deferral of payments, such as when the student is currently enrolled at a covered educational institution. Payment deferral options also include any options that may apply during the repayment period, such as an option to defer payments if the student returns to school to pursue an additional degree. The disclosure must include a description of the length of the deferment period, the types of payments that may be deferred, and a description of any payments that are required during the deferment period. The creditor may, but need not, disclose any conditions applicable to the deferment option, such as that deferment is permitted only while the student is continuously enrolled in school. If payment deferral is not an option, the creditor must disclose that the consumer must begin repayment upon consummating the loan and may not defer repayment at any time.

3. *Payment deferral options—in school deferment.* For each payment deferral option applicable while the student is enrolled at a covered educational institution the creditor must disclose additional information. The creditor must disclose whether interest will accrue while the student is enrolled at a covered educational institution and, if interest does accrue, whether payment of interest may be deferred and added to the principal balance.

4. *Combination with cost estimate disclosure.* The disclosure of payment deferral options applicable while the student is enrolled at a covered educational institution under §§ 226.38(a)(3)(ii) and (iii) may be combined with the disclosure of cost estimates required in § 226.38(a)(4). For example, the creditor may describe each payment deferral option in the same chart or table that provides the cost estimates for each payment deferral option. *See* Appendix H–18.

38(a)(4) Cost Estimates.

1. *Total cost of the loan.* For purposes of § 226.38(a)(4), the creditor must calculate the example of the total cost of the loan in accordance with the rules under § 226.18(h) for calculating the loan's total of payments.

2. *Principal amount and fees.* The creditor must calculate the principal amount by starting with a $10,000 amount and adding all finance charges that would be applicable to loans with that maximum rate of interest. For example, if a creditor charges a range of origination fees from 0% to 3%, but the 3% origination fee would apply to loans with the highest interest rate, the lender must add the 3% origination fee to the starting $10,000 principal amount, resulting in a $10,300 principal amount. Although the creditor must calculate the example using the principal amount described above, the creditor must disclose that the example provides the total cost of a $10,000 amount financed, rather than disclosing the principal amount used in calculating the loan. If the creditor only offers a particular private education loan for less than $10,000, the creditor may assume a principal amount that results in a $5,000 amount financed for that loan.

3. *Maximum interest rate.* For purposes of § 226.38(a)(4), the maximum rate of interest used to calculate the example of the total cost of the loan must be the maximum initial rate of interest disclosed in the range of rates under § 226.38(a)(1)(i).

4. *Calculated for each option to defer interest payments.* The creditor must provide an example of the total cost of the loan for each in-school deferral option disclosed in § 226.38(a)(3)(iii). For example, if the creditor provides the consumer with the option to begin making principal and interest payments immediately, to defer principal payments but begin making interest-only payments immediately, or to defer all principal and interest payments, the creditor is required to disclose three estimates of the total cost of the loan, one for each deferral option. In calculating each estimate of the total cost of the loan where interest capitalizes, the creditor must calculate the estimate using the same capitalization method that it would use if that loan were to be made. For instance, if a creditor would capitalize interest on the loan being offered on a quarterly basis, each estimate of the total cost of the loan where interest capitalizes must be calculated assuming interest capitalizes on a quarterly basis.

5. *Deferment period assumptions.* For loan programs intended for educational expenses of undergraduate students, the creditor must assume that the consumer defers payments for four years plus the loan's maximum applicable grace period, if any. For all other loans the creditor must assume that the consumer defers for the lesser of two years plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program.

38(a)(6)(ii).

1. *Terms of federal student loans.* The creditor must disclose the interest rates available under each program under title IV of the Higher Education Act of 1965 and whether the rates are fixed or variable, as prescribed in the Higher Education Act of 1965 (20 U.S.C. 1077a). Where the fixed interest rate for a loan varies by statute depending on the date of disbursement or receipt of application, the creditor must disclose only the interest rate as of the time the disclosure is provided.

38(a)(6)(iii).

1. *Web site address.* The creditor must include with this disclosure an appropriate U.S. Department of Education Web site address such as ''*federalstudentaid.ed.gov*.''

38(b) Approval Disclosures.

38(b)(1) Interest Rate.

1. *Variable rate disclosures.* The interest rate is considered variable if the terms of the legal obligation allow the creditor to increase the interest rate originally disclosed to the consumer. The provisions do not apply to increases resulting from delinquency (including late payment), default, assumption, or acceleration. In addition to disclosing the information required under §§ 226.38(b)(ii) and (iii), the creditor must disclose the information required under §§ 226.18(f)(1)(i) and (iii)—the circumstances under which the rate may increase and the effect of an increase, respectively. The creditor is required to disclose the maximum monthly payment based on the maximum

possible rate in § 226.38(b)(3)(viii), and the creditor need not disclose a separate example of the payment terms that would result from an increase under § 226.18(f)(1)(iv).

2. *Limitations on rate adjustments.* Compliance with § 226.18(f)(1)(ii) (requiring disclosure of any limitations on the increase of the interest rate) does not necessarily constitute compliance with § 226.38(b)(1)(iii) (requiring disclosure of any limitations on the interest rate adjustments, or lack thereof), because the rules under § 226.38(b)(1)(iii) differ from the rules under § 226.18(f)(1)(ii) as described in comment 18(f)(1)(ii)–1. Specifically, § 226.38(b)(1)(iii), but not § 226.18(f)(1)(ii), requires that if there are no limitations on interest rate increases, the creditor must disclose that fact. In addition, under § 226.38(b)(1)(iii), but not under § 226.18(f)(1)(ii), limitations on rate increases include, rather than exclude, legal limits in the nature of usury or rate ceilings under state or federal statutes or regulations. Under § 226.38(b)(1)(iii), if a rate limitation in the form of a legal limit applies (rather than a numerical rate limitation in the legal obligation between the parties) the creditor must disclose that the maximum rate is determined by law and may change.

Paragraph 38(b)(2)

1. *Fees and default or late payment costs.* Creditors may follow the commentary for § 226.38(a)(2) in complying with § 226.38(b)(2). Creditors must disclose the late payment fees required to be disclosed under § 226.18(l) as part of the disclosure required under § 226.38(b)(2)(ii). If the creditor includes the itemization of the amount financed under § 226.18(c), any fees disclosed as part of the itemization need not be separately disclosed elsewhere.

38(b)(3) Repayment Terms.

1. *Approved principal amount.* The principal amount for which the consumer has been approved should include all charges incorporated in the approved loan amount. This amount should reflect what the face amount of the note would be if the loan were given based on the loan amount initially approved. Prepaid finance charges should not be included in the initial approved principal amount disclosed if they would not be included in the amount on the face of the note. *See* comment 18(b)(3)–1. If the creditor elects to provide an itemization of the amount financed under § 226.18(c)(1), and the itemization states the approved principal amount, the creditor need not list the approved principal amount elsewhere.

2. *Loan term.* The term of the loan is the maximum period of time during which regularly scheduled payments of principal and interest are due on the loan. If the payment schedule disclosed in accordance with § 226.18(g) reflects the maximum repayment term, then compliance with § 226.18(g) constitutes compliance with § 38(b)(3)(ii).

3. *Payment deferral options applicable to the consumer.* Creditors may follow the commentary for § 226.38(a)(3)(ii) in complying with § 226.38(b)(3)(iii).

4. *Payments required during enrollment.* Required payments that must be disclosed include payments of interest and principal, interest only, or other payments that the consumer must pay during the time that the student is enrolled. If the payment schedule disclosed in accordance with § 226.18(g) reflects payments required while the student is enrolled, then compliance with § 226.18(g) constitutes compliance with § 38(b)(3)(iv).

5. *Bankruptcy limitations.* The creditor may comply with § 226.38(b)(3)(vi) by disclosing the following statement: ''If you file for bankruptcy you may still be required to pay back this loan.''

6. *An estimate of the total amount for repayment.* The creditor must disclose an estimate of the total amount for repayment at two interest rates:

i. The interest rate in effect on the date of approval. Compliance with the total of payments disclosure requirement of § 226.18(h) constitutes compliance with this requirement.

ii. The maximum possible rate of interest applicable to the private education loan or, if the maximum rate cannot be determined, a rate of 21%. If the legal obligation between the parties specifies a numeric maximum rate of interest beyond which the interest rate on the loan may not increase, the creditor must calculate the total amount for repayment based on that rate. If the legal obligation does not specify a numeric maximum rate, but a limitation on interest rate increases exists in the form of a legal limit in the nature of a usury or rate ceiling under state or federal statutes or regulations, the creditor must calculate the total amount for repayment based on that rate, and the creditor must disclose that the maximum rate is determined by law and may change. If a maximum rate cannot be determined, the creditor must base the disclosure on a rate of 21% and must disclose that there is no maximum rate and that the total amount for repayment disclosed under § 226.38(b)(3)(vii)(A) is an estimate and will be higher if the applicable interest rate increases.

7. *The maximum monthly payment.* The creditor must disclose the maximum payment that the consumer could be required to make under the loan agreement, calculated using the maximum rate of interest applicable to the private education loan, or if the maximum rate cannot be determined, a rate of 21%. The creditor should follow comment 38(b)(3)–6.ii in determining and disclosing the maximum rate of interest. In addition, if a maximum rate cannot be determined, the creditor must state that there is no maximum rate and that the monthly payment amounts disclosed under § 226.38(b)(3)(viii) are estimates and will be higher if the applicable interest rate increases.

38(b)(4) Alternatives to Private Education Loans.

1. *General.* Creditors may follow the commentary for § 226.38(a)(6) in complying with § 226.38(b)(4).

38(b)(5) Rights of the Consumer.

1. *Notice of 30 day acceptance period.* The disclosure must include the specific date on which the 30 day acceptance period expires and state that the consumer may accept the terms of the loan until that date. The disclosure must also specify the method or methods by which the consumer may cancel.

38(c) Final Disclosures

1. *Notice of right to cancel.* The disclosure must include the specific date on which the three-business day cancellation period expires and state that the consumer has a right to cancel by that date. *See* comments 39(d)–1 and 2. For example, if the disclosures were mailed to the consumer on Friday, June 1, and the consumer is deemed to receive them on Tuesday, June 5, the creditor could state: ''You have a right to cancel this transaction, without penalty, by midnight on June 8, 2009. No funds will be disbursed to you or to your school until after this time. You may cancel by calling us at 800–XXX–XXXX.'' If the creditor requires cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure. The disclosure must also specify the method or methods by which the consumer may cancel.

2. *More conspicuous.* The statement of the right to cancel must be more conspicuous than any other disclosure required under this section except for the finance charge, the interest rate, and the creditor's identity. *See* § 226.37(c)(2)(iii). The statement will be deemed to be made more conspicuous if it is segregated from other disclosures, placed near the top of the disclosure document, and highlighted in relation to other required disclosures. For example, the statement may be outlined with a prominent, noticeable box; printed in contrasting color; printed in larger type, bold print or different type face; underlined; or set off with asterisks.

Section 226.39—Limitations on Private Educational Loans

1. *Co-branding—definition of marketing.* The prohibition on co-branding in §§ 226.39(a) and (b) applies to the marketing of private education loans. The term marketing includes any advertisement under § 226.2(a)(2). In addition, the term marketing includes any document provided to the consumer related to a specific transaction. For example, the term marketing includes an application or solicitation, a promissory note or a contract provided to the consumer.

2. *Implied endorsement.* An implication that a private student loan is offered or made by the covered educational institution instead of by the creditor is included in the prohibition on implying that the covered educational institution endorses the private educational loan under § 226.39(a)(1). However, the use of a creditor's own name, even if that name includes the name of a covered educational institution, does not imply endorsement. For example, a credit union whose name includes the name of a covered educational institution is not prohibited from using its own name. In addition, a state's or an institution of higher education's use of a state seal, with appropriate authorization, in the marketing of state education loan products does not imply endorsement.

3. *Disclosure.*

i. A creditor is considered to have complied with § 226.39(a)(2) if the creditor's marketing contains a clear and conspicuous statement using the name of the creditor and

the name of the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution. For example, ''[Name of creditor]'s loans are not endorsed by [name of school] and [name of creditor] is not affiliated with [name of school].''

ii. A creditor is considered to have complied with § 226.39(b) if the creditor's marketing contains a clear and conspicuous statement, using the name of the creditor's loan or loan program, the name of the covered educational institution, and the name of the creditor, that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor. For example, ''[Name of loan or loan program] is not being offered or made by [name of school], but by [name of creditor].''

Paragraph 39(c)

1. *30 day acceptance period.* The creditor must provide the consumer with at least 30 calendar days from the date the consumer receives the disclosures required under § 226.38(b) to accept the terms of the loan. The creditor may provide the consumer with a period of time longer than 30 days after the consumer receives the disclosures for the consumer to accept the transaction. If the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed. For purposes of § 226.37(c), ''business day'' means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 37(d)–1. The consumer may accept the loan at any time before the end of the 30 day period.

2. *Method of acceptance.* The creditor must specify a method or methods by which the consumer can accept the loan at any time within the 30-day acceptance period. The creditor may require the consumer to communicate acceptance orally or in writing. Acceptance may also be communicated electronically, but electronic communication must not be the only means provided for the consumer to communicate acceptance. If acceptance by mail is allowed, the consumer's communication of acceptance is considered timely if placed in the mail not later than 30 calendar days following the date the consumer received the disclosure required under § 226.39(b).

3. *Prohibition on changes to rates and terms.* Except as specified in § 226.39(c)(2), the creditor may not change the rates and terms of the loan that are required to be disclosed under § 226.38(b) until the 30-day acceptance period has expired with the consumer having accepted the loan, or until loan funds are disbursed. The creditor is permitted to make changes that do not affect any of the terms disclosed to the consumer under § 226.38(b). Changes to the rate based on adjustments to the index used for the loan and changes that will unequivocally benefit the consumer are not prohibited. For example, a creditor is permitted to reduce the interest rate or lower the amount of a fee.

4. *Changes to rates and terms based on request by consumer.* The prohibition on changes to the rate and terms of the loan in § 226.39(c)(2) applies only to changes made in the absence of a request from the consumer. The creditor may make changes to the rate and terms of the private education loan in connection with accommodating a request from the consumer. For example, the consumer may request a lower principal amount upon receiving additional financial assistance from another source after the consumer applied for the private educational loan. In this situation, the creditor is permitted to provide a lower principal amount, and to make any other changes such as a different repayment term, in response to the consumer's request. However, the creditor would need to provide a new set of approval disclosures under § 226.38(b) and provide the consumer with a new 30-day acceptance period under § 226.39(c).

Paragraph 39(d)

1. *Right to cancel.* If the creditor mails the disclosures including the statement of the right to cancel, the disclosures are considered received by the consumer within three business days from the date on which the creditor mailed the statement. *See* comment 37–2. The consumer has three business days from the date on which the disclosures are received to cancel the loan. For example, if the creditor places the disclosures in the mail on Thursday, June 4, the disclosures are considered received on Monday, June 8 and the consumer may cancel any time before midnight Wednesday, June 10. The creditor may provide the consumer with more time to cancel the loan than the minimum three business days required under this section. If the creditor provides the consumer with a longer period of time in which to cancel the loan, the creditor may disburse the funds three business days after the consumer has received the disclosures required under this section, but the creditor must honor the consumer's later timely cancellation request.

2. *Method of cancellation.* The creditor must specify a method or methods by which the consumer may cancel. For example, the creditor may require the consumer to communicate cancellation orally or in writing. Cancellation may also be communicated electronically, but electronic communication must not be the only means by which the consumer may cancel. If the creditor allows cancellation by mail, the creditor must specify the address of the creditor's place of business or the name and address of an agent of the creditor to receive notice of cancellation. The creditor must also specify that the consumer's mailed request will be deemed timely if placed in the mail before the expiration of the cancellation period. The creditor must wait to disburse funds until it is reasonably satisfied that the consumer has not canceled. For example, the creditor may satisfy itself by either waiting a reasonable time after expiration of the cancellation period to allow for delivery of a mailed notice or by obtaining a written statement from the consumer that the right has not been exercised.

3. *Cancellation without penalty.* The creditor may not charge the consumer a fee for exercising the right to cancel under § 226.39(d). The prohibition extends only to fees charged specifically for canceling the loan. The creditor is not required to refund fees, such as an application fee, charged to consumers for loans that are not cancelled.

Paragraph 39(e)

1. *General.* Section 226.39(e) requires that the creditor obtain the self-certification form, signed by the consumer, before consummating the private education loan. The rule applies only to private educational loans that will be used for the postsecondary educational expenses of a student while that student is attending an institution of higher education as defined in § 226.37(b)(2). It does not apply to all covered educational institutions. The requirement applies even if the student is not currently attending an institution of higher education, but will use the loan proceeds for postsecondary educational expenses while attending such institution. For example, a creditor is required to obtain the form before consummating a private education loan provided to a high school senior for expenses to be incurred during the consumer's first year of college. This provision does not require that the creditor obtain the self-certification form in instances where the loan is not intended for a student attending an institution of higher education, such as when the consumer is consolidating loans after graduation. Section 155(a)(2) of the Higher Education Act of 1965 provides that the form shall be made available to the consumer by the relevant institution of higher education. However, § 226.39(e) provides flexibility to institutions of higher education and creditors as to how the completed self-certification form is provided to the lender. The creditor may receive the form directly from the consumer, or the creditor may receive the form from the consumer through the institution of higher education.

2. *Electronic signature.* Under Section 155(a)(2) of the Higher Education Act of 1965, the institution of higher education may provide the self-certification form to the consumer in written or electronic form. Under Section 155(a)(5) of the Higher Education Act of 1965, the form may be signed electronically by the consumer. A creditor may accept the self-certification form from the consumer in electronic form. A consumer's electronic signature is considered valid if it meets the requirements issued by the Department of Education under Section 155(a)(5) of the Higher Education Act of 1965.

Paragraph 39(f)

1. *General.* Section 226.39(f) does not specify the format in which creditors must provide the required information to the covered educational institution. Creditors may choose to provide only the required information, or may provide copies of the form or forms the lender uses to comply with § 226.38(a).◀

* * * * *

Appendixes G and H—Open-End and Closed-End Model Forms and Clauses

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed

to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the act's protection from liability, except formatting changes may not be made to model forms and samples in ►H–18, H–19, H–20,◄ G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(D), G–18(A) (except as permitted pursuant to § 226.7(b)(2)), G–18(B)–(C), G–19, G–20, and G–21. The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using ''borrower'' and ''creditor'' instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain state ''plain English'' requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

* * * * *

Appendix H—Closed-End Model Forms and Clauses

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21. *HRSA–500–1 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved[.] ►for use for loans made prior to the effective date of the disclosures required under Subpart F◄. The form [may be used] ►was approved ◄ for all Health Education Assistance Loans (HEAL) with a variable interest rate that [are]►were considered◄ interim student credit extensions as defined in Regulation Z.

22. *HRSA–500–2 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved[.] ►for use for loans made prior to the effective date of the disclosures required under Subpart F◄. The form [may be used] ►was approved◄ for all HEAL loans with a fixed interest rate that [are]►were considered◄interim student credit extensions as defined in Regulation Z.

23. *HRSA–502–1 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved[.] ►for use for loans made prior to the effective date of the disclosures required under Subpart F◄. The form [may be used] ►was approved◄ for all HEAL loans with a variable interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

24. *HRSA–502–2 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved[.] ►for use for loans made prior to the effective date of the disclosures required under Subpart F◄. The form [may be used] ►was approved◄ for all HEAL loans with a fixed interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

►25. *Models H–18, H–19, H–20*.

i. These model forms illustrate disclosures required under § 226.38 on or with an application or solicitation, at approval, and before disbursement of a private education loan. Although use of the model forms is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to private education loan disclosures. Creditors may make certain types of changes to private education loan model forms H–18 (application and solicitation), H–19 (approval), and H–20 (final) and still be deemed to be in compliance with the regulation, provided that the required disclosures are made clearly and conspicuously. The model forms aggregate disclosures into groups under specific headings. Changes may not include rearranging the sequence of disclosures, for instance, by rearranging which disclosures are provided under each heading or by rearranging the sequence of the headings and grouping of disclosures. Changes to the model forms may not be so extensive as to affect the substance or clarity of the forms. Creditors making revisions with that effect will lose their protection from civil liability.

The creditor may delete inapplicable disclosures, such as:

- The Federal student financial assistance alternatives disclosures
- The self-certification disclosure

Other permissible changes include, for example:

- Adding the creditor's address, telephone number, or Web site
- Combining required terms where several numerical disclosures are the same, for instance, if the initial approved principal amount is included in an itemization of the amount financed
- Combining the disclosure of payment deferral options required in § 226.38(a)(3) with the disclosure of cost estimates required in § 226.38(a)(4) in the same chart or table (*See* comment 38(a)(3)–4.)
- Using the first person, instead of the second person, in referring to the borrower
- Using ''borrower'' and ''creditor'' instead of pronouns
- Incorporating certain state ''plain English'' requirements
- Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items

ii. Although creditors are not required to use a certain paper size in disclosing the §§ 226.38(a), (b) and (c) disclosures, samples H–21, H–22, and H–23 are designed to be printed on two 8½ x 11 inch sheets of paper. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size.

B. Sufficient spacing between lines of the text.

C. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 8-point type.

D. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

E. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

iii. While the Board is not requiring issuers to use the above formatting techniques in presenting information in the disclosure, the Board encourages issuers to consider these techniques when deciding how to disclose information in the disclosure, to ensure that the information is presented in a readable format.

iv. Creditors are allowed to use color, shading and similar graphic techniques in the disclosures, so long as the disclosures remain substantially similar to the model and sample forms in appendix H.

26. *Sample H–21*. This sample illustrates a disclosure required under § 226.38(a). The sample assumes a range of interest rates between 7.375 and 17.375 percent. The sample assumes a variable interest rate that will never exceed 25 percent over the life of the loan. The term of the sample loan is 20 years for an amount up to $20,000 and 30 years for an amount more than $20,000. The repayment options and sample costs have been combined into a single table, as permitted in the commentary to § 226.38(a)(3). It demonstrates the loan amount, interest rate, and total paid when a consumer makes loan payments while in school, pays only interest while in school, and defers all payments while in school.

27. *Sample H–22*. This sample illustrates a disclosure required under § 226.38(b). The sample assumes the consumer financed $10,000 at a 7.059 annual percentage rate. The sample assumes a variable interest rate that will never exceed 25 percent over the life of the loan. The payment schedule and terms assumes a 20 year loan term and that the consumer elected to defer payments while the student is enrolled in school. This includes a sample disclosure of a loan amount of $10,000 and an origination fee of $0, for a total amount financed of $10,000.

28. *Sample H–22*. This sample illustrates a disclosure required under § 226.38(c). The sample assumes the consumer financed $10,000 at a 7.059 annual percentage rate. The sample assumes a variable annual percentage rate in an instance where there is no maximum interest rate. The sample demonstrates disclosure of an assumed maximum rate, and the statement that the consumer's actual maximum rate and payment amount could be higher. The payment schedule and terms assumes a 20

year loan term, the assumed maximum interest rate, and that the consumer elected to defer payments while the student relates is enrolled in school. This includes a sample disclosure of a loan amount of $10,000 and an origination fee of $0, for a total amount financed of $10,000.◄

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–5561 Filed 3–23–09; 8:45 am]

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Federal Register

Tuesday,
March 24, 2009

Part III

Department of Transportation

Federal Highway Administration

23 CFR Part 771
Federal Transit Administration

49 CFR Part 622
Environmental Impact and Related Procedures; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 771

Federal Transit Administration

49 CFR Part 622

[Docket No. FTA–2006–26604]

RIN 2132–AA87

Environmental Impact and Related Procedures

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) issue this final rule that modifies our regulations to make certain changes mandated by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). SAFETEA–LU prescribes additional requirements for environmental review and project decisionmaking that are not appropriately reflected in the existing FHWA–FTA joint National Environmental Policy Act (NEPA) procedures. Additionally, this final rule creates certain new categorical exclusions (CE) allowing proposed actions to proceed without an environmental assessment (EA) or environmental impact statement (EIS), and makes other minor changes to the joint procedures in order to improve the description of the procedures or to provide clarification with respect to the interpretation of certain provisions.

DATES: *Effective Date:* April 23, 2009.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Carol Braegelmann, Office of Project Development and Environmental Review (HEPE), (202) 366–1701, or Janet Myers, Office of Chief Counsel (HCC), (202) 366–2019. For FTA: Joseph Ossi, Office of Planning and Environment (TPE), (202) 366–1613, or Christopher Van Wyk, Office of Chief Counsel, (202) 366–1733. Both the FHWA and FTA are located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., EST, for the FHWA, and 9 a.m. to 5:30 p.m., EST, for FTA, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144). Section 6002 of SAFETEA–LU created 23 U.S.C. 139, which contains new requirements that the FHWA and FTA must meet in complying with NEPA (42 U.S.C. 4321–4347). In addition to these new requirements, section 6010 of SAFETEA–LU requires the FHWA and FTA to initiate rulemaking to establish, to the extent appropriate, CEs for activities that support the deployment of intelligent transportation infrastructure and systems.

The FHWA and FTA published a notice of proposed rulemaking (NPRM) on August 7, 2007, at 72 FR 44038. The NPRM requested comments on certain changes proposed to codify changes mandated by 23 U.S.C. 139 in the joint NEPA procedures and to eliminate confusion or inconsistencies that could otherwise result. The NPRM also proposed several new CEs for projects that meet the criteria for categorical exclusion from NEPA review. Interested parties were invited to submit comments. The FHWA and FTA also invited interested parties to submit written evidence about particular congestion management activities that they believe qualify as CEs and specific regulatory language that might be used in one or more CEs for these types of projects. That input is being used to develop proposed CEs that will be published for public review and comment. The NPRM also proposed other minor changes to the joint procedures in order to improve the description of the procedures or to provide clarification with respect to the interpretation of certain provisions.

Profile of Respondents

The docket received a total of 15 responses to the NPRM. Out of the 15 responses, 5 were submitted by State Departments of Transportation (DOT), 6 by transit agencies, 3 by trade associations, and 1 by a metropolitan planning organization.

General Comments

Two commenters suggested that the FHWA and FTA replace the terms ''Urban Mass Transportation Administration'' and ''UMTA'' with the terms ''Federal Transit Administration'' and ''FTA'' throughout the entire rule, including the sections where no revisions were proposed. By final rule published on May 9, 2005, the FHWA and FTA already corrected the name of the FTA from its former name, the Urban Mass Transportation Administration (UMTA), in 23 CFR part 771 and 49 CFR part 622. *See,* Environmental Impact and Related Procedures, 70 FR 24468 (May 9, 2005) (codified at 23 CFR part 771 and 49 CFR part 622). The current Code of Federal Regulations and the **Federal Register** are available online from GPO Access, a service of the U.S. Government Printing Office, at *http://www.gpoaccess.gov/index.html*.

Numerous commenters expressed general support for the NPRM, although one commenter expressed concern that a substantial rewrite of the NEPA regulation may be delayed due to this rulemaking, which has a more limited scope. Along those same lines, two commenters suggested that the FHWA and FTA incorporate all mandatory elements of the new review process under 23 U.S.C. 139, but another commenter disagreed and supported the decision not to incorporate all elements as part of this rulemaking. Finally, one commenter suggested that this rulemaking is unnecessary, and that, when the FHWA and FTA decide to propose more significant revisions to 23 CFR part 771, the focus be on eliminating regulation and substituting guidance in its place. The commenter also suggested that inconsistencies between 23 U.S.C. 139 and 23 CFR part 771 would best be remedied by eliminating the regulation.

The FHWA and FTA note the positive comments received and agree with the other commenters that a more substantial revision to the NEPA regulation is desirable. A more limited rulemaking was first necessary to avoid extending any confusion that would arise from conflicts between the NEPA regulation and the new requirements of 23 U.S.C. 139. The FHWA and FTA also believe that eliminating 23 CFR part 771 would take away the regulatory basis for many of the provisions that both agencies use as part of the NEPA process. Substituting guidance in place of these regulations would eliminate a major factor in providing the needed consistency among FHWA and FTA field locations and among applicants. Further, the FHWA and FTA would no longer have the benefit of NEPA provisions with the force of law if guidance were substituted. This would likely hamper efforts to defend environmental litigation claims.

Note that the FHWA and FTA made one change with respect to the phrase ''environmental document,'' which was used in the NPRM but replaced with ''environmental review document(s)'' in the preamble discussion and regulatory text of this final rule. The FHWA and FTA use ''environmental review document(s)'' to include documents such as Section 4(f) evaluations and other documents that would not be

covered by the definition of ''environmental document'' in the Council on Environmental Quality (CEQ) NEPA regulations at 40 CFR 1508.10. In two places in the existing regulation, the term ''NEPA document'' was replaced with ''environmental review document'' for consistency with the other references.

Section-by-Section Analysis of Specific Comments

In this preamble, all references to the provisions of 23 CFR part 771 refer to the final rule as presented herein, unless this notice specifically indicates otherwise. No comments were received with respect to 23 CFR 771.101, 771.105, 771.131, and 771.133. The FHWA and FTA have previously removed section 771.135 through the issuance of a final rule on March 12, 2008, creating a new 23 CFR part 774 that deals with Section 4(f) matters.

Section 771.107 Definitions

Several commenters suggested that the terms ''participating agency,'' ''project sponsor,'' and ''cooperating agency'' be defined in part 771. They argue that the terms are used throughout part 771, and a person should not have to go to SAFETEA–LU or elsewhere to look up the definitions. The FHWA and FTA agree that ''participating agency'' and ''project sponsor'' should be defined and have provided the definitions. However, ''cooperating agency'' is defined in the CEQ NEPA regulations at 40 CFR 1508.5 and 1501.6. Because part 771 is supplemental to the CEQ regulation and the FHWA and FTA expect the two regulations to be used together, the FHWA and FTA have not repeated the definition of ''cooperating agency'' in part 771.

One commenter asserted that the stipulation that a lead agency be a direct recipient of Federal funds originated in guidance, not legislation. The commenter specifically notes that FHWA guidance, rather than legislation, requires direct recipients, not sub-recipients, be joint lead agencies with the Administration.[1] The FHWA believes that its interpretation of the intent of the lead agency provision in 23 U.S.C. 139 is appropriate in light of the need to give effect to other statutes, regulations, and policies applicable to the Federal-aid highway program.

One commenter expressed concern regarding the definition of ''Administration.'' The concern is that, if FTA were to assign responsibility for CE determinations to a State in accordance with SAFETEA–LU section 6004 (codified at 23 U.S.C. 326), then a transit agency in that State would be forced to obtain project approvals not from FTA but from a State agency, probably the State DOT, that may be unfamiliar with the transit agency's programs. FTA agrees and will continue to provide CE determinations for any transit agency that prefers to continue working with FTA. FTA will provide affected transit agencies an opportunity to comment on this issue during the development of any section 6004 Memorandum of Understanding (MOU) to which FTA is party. If FTA were to sign a section 6004 MOU, that MOU would explicitly exclude the projects of any transit agency that prefers to work with FTA. However, the State DOT is the grant recipient for several FTA programs, the largest of which is the Non-Urbanized Area Formula Program, and these State-administered transit programs would be the primary candidates for assignment of CE approvals by FTA to the State. The definition of ''Administration'' is consistent with FTA's position on its assignment of CE responsibilities to States, as outlined above. Section 8 of the FHWA's ''Questions and Answers on the Implementation of SAFETEA–LU Section 6004 (State Assumption of Responsibility for Categorical Exclusions),'' which is located at *http://www.fhwa.dot.gov/hep/6004qa.htm*, addresses transit-related considerations in more detail.

The regulation refers to ''federally-recognized Indian tribal governmental units'' in paragraphs (f), (h), and (i) of section 771.107, and in paragraph (c)(3) of section 771.109. This terminology is being used because it is consistent with the definition of ''agency'' in 23 U.S.C. 139(a)(1). The change is intended to provide internal consistency within part 771 in the references to Native American tribes and consistency between part 771 and 23 U.S.C. 139. It is not intended to differentiate the references to Native American tribes in part 771 from other references to Native American tribes in other regulations or executive orders.

Section 771.109 Applicability and Responsibilities

Several commenters stated that when a State DOT passes FHWA funds through to a turnpike authority or to a local or tribal governmental unit, the sub-recipient of the FHWA funds should be the joint lead agency with the FHWA and should be responsible for, among other things, the environmental review documents and mitigation commitments. As explained above, the FHWA and FTA believe that it is appropriate to require the direct recipients of Federal funds to be responsible for adherence to Federal requirements. For the FHWA, the direct recipient typically is the State DOT. This interpretation is consistent with FHWA statutes, regulations, and policy. The local or tribal governmental unit or turnpike authority may also be a joint lead agency, but is not required to be. The FHWA and FTA have issued ''SAFETEA–LU Environmental Review Process: Final Guidance,'' November 15, 2006, which discusses the provisions regarding lead agencies in greater detail.[2] The FHWA expects the role of the State DOT, as a funding agency, to be similar to the oversight role played by the FHWA. The State DOT would be responsible for the content of the environmental review documents and for fulfilling mitigation commitments in the same way that the FHWA is responsible, but the State DOT may not have the same day-to-day role that it has when the project is one that the State DOT has planned and is developing.

One commenter asserted that the FHWA and FTA should define ''lead agency'' so that the lead agency maintains maximum control over participating and cooperating agencies. The commenter said that the lead agency should have the authority to set deadlines and schedules and to decide which agencies to include in the review process. The FHWA and FTA have not changed the regulatory language in response to this comment. The lead agencies have the authority to set schedules and deadlines in accordance with 23 U.S.C. 139 and other applicable laws. When 23 U.S.C. 139 applies, the law clearly requires that all agencies with an interest be invited to participate. However, the lead agencies are responsible for the coordination plan, which can specify the nature and timing of the interaction with the participating agencies (including any cooperating agencies) and can provide the vehicle by which the lead agencies exercise control over the interaction with other agencies. As the coordination plan is being developed, the lead agencies should consult with the participating agencies on the

[1] Section 774.14 of this final rule defines ''Administration'' as ''FHWA or FTA, whichever is the designated Federal lead agency for the proposed action. A reference herein to the Administration means the State when the State is functioning as the FHWA or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, or 327, or other applicable law''. All references to the ''Administration'' in the preamble to this final rule are consistent with this definition.

[2] The final guidance is available at *http://www.fhwa.dot.gov* or in hard copy upon request.

identification of milestones in the NEPA process at which agency interaction would occur, and on the nature of that interaction. Such consultation is appropriate because key elements of the coordination plan may set expectations that require a commitment of resources by the participating agencies. The previously referenced FHWA and FTA guidance, ''SAFETEA–LU Environmental Review Process: Final Guidance,'' November 15, 2006, discusses participating agencies and coordination plans in greater detail.

Section 771.111 Early Coordination, Public Involvement, and Project Development

One commenter pointed out that the NPRM would give two sections of the regulation the same name. Our intent was not to change any of the existing section headings. The error has been corrected in the final rule.

Several commenters pointed out that the regulatory provisions on linking the transportation planning and NEPA processes that appear in 23 CFR 450.212 and 450.318 apply as much to these environmental impact procedures in part 771 as to the planning procedures in 23 CFR part 450. These commenters suggested that section 771.111 directly address the use of planning information and results in environmental review documents. The FHWA and FTA decline to reiterate the provisions of sections 450.212 and 450.318 in this rule. Not only would such reiteration be redundant, but it would require the insertion of major, new regulatory text that has not been subjected to review and comment. The FHWA and FTA have added in paragraph (a)(2) of section 771.111 a more explicit reference to the relevant sections of the planning regulations. A reference has also been added to paragraph (b) of section 771.123.

One commenter noted that sections 771.109 and 771.111 appear to encourage almost any public agency to become a lead agency. The FHWA and FTA disagree. The proposed language conforms to 23 U.S.C. 139 and the CEQ regulations, which specify which agencies may be joint lead agencies.

One commenter suggested that the sentences dealing with cooperating agencies in paragraph (c) of section 771.111 belong more appropriately in section 771.109. The FHWA and FTA do not agree. Section 771.109 deals with the roles and responsibilities of the lead agencies, applicants, and project sponsors, *i.e.*, the primary agencies involved in advancing the project. Section 771.111 addresses the coordination of the lead agencies with other agencies, including participating and cooperating agencies, and the public. The sentences in paragraph (c) of section 771.111 regarding cooperating agencies are appropriately located in the section discussing coordination.

One commenter suggested that the FHWA and FTA amend paragraph (c) of section 771.111, a paragraph to which no changes were proposed in the NPRM, to reflect that State, local, and tribal governmental units can now be joint lead agencies with the Administration. The commenter offered the following proposed language for paragraph (c) of section 771.111: ''When FHWA and FTA are involved in the development of joint projects, or when FHWA or FTA acts as a joint lead agency with another Federal agency, any state or local governmental entity, or a federally-recognized Indian tribe, a mutually acceptable process will be established on a case-by-case basis.'' The FHWA and FTA disagree with this comment and decline to accept the commenter's proposed language. Paragraph (c) of section 771.111 is intended to apply only when both the FHWA and FTA are involved in the development of a project or when the FHWA or FTA acts as a joint lead agency with another ''Federal agency,'' as defined in the CEQ regulation at 40 CFR 1508.12. The provisions of paragraph (c) in section 771.111 are intended to provide a smooth environmental review process despite programmatic differences between the FHWA and FTA or differences between part 771 and another Federal agency's NEPA procedures. It is neither necessary nor desirable to expand the range of entities covered by paragraph (c) of section 771.111 to include entities that are not Federal agencies. When the FHWA or FTA is the only Federal lead agency, the procedures detailed in 23 U.S.C. 139 (as applicable) and 23 CFR part 771 apply and reconciliation of those procedures with any other agency's NEPA procedures is not necessary.

Also, in order to make clear that paragraph (c) of section 771.111 applies in any instance in which both the FHWA and FTA are involved in the development of a project and not to some more limited range of ''joint projects,'' the FHWA and FTA have changed paragraph (c) of section 771.111 in the final rule to read as follows: ''When both FHWA and FTA are involved in the development of a project, or when FHWA or FTA acts as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis.''

One commenter requested that the FHWA and FTA change ''may'' to ''should'' in paragraph (c)(3) of section 771.109 and paragraph (d) of section 771.111, where the rule discusses early agency coordination and public involvement activities. The commenter suggested that the FHWA and FTA make it clear that EAs and EISs require opportunities for agency and public involvement. The FHWA and FTA did not adopt this comment and the NPRM wording is retained in the final rule. In paragraph (c)(2) of section 771.109, the rule discusses the ability of the Administration to extend joint lead agency status to entities that do not qualify as mandatory joint lead agencies under 23 U.S.C. 139(c). The authority to invite other entities to serve as joint lead agencies is derived from the CEQ regulation (40 CFR 1501.5 and 1506.2), and is expressed in that regulation as a discretionary action. The FHWA and FTA believe that the decision whether to confer joint lead agency status on an entity has many potential implications and, thus, it should remain discretionary so that the Administration and any mandatory joint lead agency can exercise their judgment on a case-by-case basis. In paragraph (d) of section 771.111, the rule distinguishes between those situations where the lead agencies must invite another agency to be a participating or cooperating agency and those situations where such invitations are discretionary. The distinctions in the rule mirror those contained in 23 U.S.C. 139 and in the CEQ regulation (40 CFR 1501.6 and 1508.5). The FHWA and FTA guidance, ''SAFETEA–LU Environmental Review Process: Final Guidance,'' November 15, 2006, discusses cooperating and participating agencies in greater detail.

Two commenters requested that paragraph (d) of section 771.111 indicate that the requirement to invite interested agencies to participate applies only to an EIS for which the Notice of Intent (NOI) appeared in the **Federal Register** after SAFETEA–LU enactment on August 10, 2005. The FHWA and FTA are not making the requested change because such a statement would not be accurate. At the discretion of the FHWA and FTA, the environmental review process outlined in 23 U.S.C. 139 may be applied to EAs or CEs, or to projects initiated prior to SAFETEA–LU enactment under certain circumstances when the project is re-scoped or reassessed. The FHWA and FTA carefully chose the language in paragraph (d) of section 771.111 to cover those cases as well as the cases offered by the commenter. Details are

provided in the FHWA/FTA guidance on 23 U.S.C. 139 titled ''SAFETEA–LU Environmental Review Process Final Guidance,'' November 15, 2006, which is available at *http://www.fhwa.dot.gov* or in hard copy upon request.

Two commenters suggest that the word ''entitled'' in footnote 4 to the proposed paragraph (d) of section 771.111 be corrected to ''titled,'' reflecting the use of ''titled'' elsewhere in the proposed regulatory text. No difference in meaning was intended, and the suggested change has been made for stylistic consistency.

Although the NPRM did not propose to change the last sentence of paragraph (d) of section 711.111, two commenters requested that the FHWA and FTA define or reference the definition of the phrase ''agencies with jurisdiction by law.'' The phrase ''jurisdiction by law'' is defined in the CEQ regulation at 40 CFR 1508.15. Because 23 CFR part 771 supplements the CEQ regulation and because the FHWA and FTA expect 23 CFR part 771 to be used together with the CEQ regulation, the definition of ''jurisdiction by law'' is not repeated here. Additional guidance can be found in the ''Forty Most Frequently Asked Questions Concerning CEQ's National Environmental Policy Act Regulations'' (March 23, 1981); the memorandum for the heads of Federal agencies entitled ''Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act'' and its Attachment I, ''Factors for Determining Whether to Invite, Decline or End Cooperating Agency Status'' (January 30, 2002); and the memorandum for heads of Federal agencies entitled ''Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act'' (July 28, 1999). These documents can be obtained from the CEQ Web site at *http://www.nepa.gov/regs/guidance.html*.

Two commenters requested that the FHWA and FTA add a footnote referencing the FHWA/FTA ''Guidance for Determining *De Minimis* Impacts to Section 4(f) Resources,'' dated December 13, 2005, to section 771.111. The FHWA and FTA issued a Section 4(f) final rule (23 CFR part 774) on March 12, 2008, at 73 FR 13367, that also addresses *de minimis* impact determinations and should be included in the footnote. The logical location for the footnote that the commenters requested is paragraph (h)(2)(viii) of section 771.111. The FHWA and FTA have added a new footnote 5 to the regulatory text of paragraph (h)(2)(viii) of section 771.111 in response to these comments.

Section 771.113 Timing of Administration Activities

One commenter requested the FHWA and FTA consider further revisions to paragraph (a) of section 771.113 to increase flexibility on actions that can be taken during the NEPA process. Because the scope of this rulemaking is limited to making required changes resulting from law and making minor clarifications to the existing regulations, the FHWA and FTA decline to deliberate the more substantive changes requested by this comment at this time. The FHWA and FTA will consider requests for additional, substantive changes in a future rulemaking.

Commenters suggested that the first sentence of paragraph (a) of section 771.113 should, for internal consistency, refer to the ''work necessary to complete a FONSI [Finding of No Significant Impact] or ROD [Record of Decision]'' rather than a ''FONSI or EIS.'' The suggested change has been made and the regulation now references the decision documents in both cases.

The list of exceptions to the limitation on actions presented in paragraph (a) of section 771.113 has grown so that the paragraph is no longer understandable. FHWA and FTA concluded that the provision should be reorganized for clarity and to accommodate the addition of new exceptions pursuant to SAFETEA–LU. Accordingly, FHWA and FTA have added a new paragraph (d) to section 771.113 to list the exceptions, and to reference related FHWA regulations that apply only to the FHWA program. The new exceptions are the acquisition of railroad right-of-way in accordance with 49 U.S.C. 5324(c) and the acquisition of transit rolling stock in accordance with 49 U.S.C. 5309(h)(6), which provisions were added or modified by SAFETEA–LU. The exceptions for hardship and protective acquisition of right-of-way remain and are also listed in paragraph (d) of section 771.113.

Section 771.115 Classes of Actions

The only revision made by the final rule is to replace the word ''cumulative'' with the word ''cumulatively'' in order to fix a grammatical error.

Section 771.117 Categorical Exclusions

The FHWA and FTA received some general support for adding a CE for Intelligent Transportation Systems (ITS) activities. One commenter expressed support for adding activities that support the deployment of ITS to the list of CEs in paragraph 771.117(c)(21) but expressed concern that the proposed CE was written too narrowly. The commenter specifically mentioned transit passenger information technology and transit security systems as possibly not covered by the new CE. In accordance with section 6010 of SAFETEA–LU, the FHWA and FTA worded the proposed CE for ITS to conform as closely as possible to the statutory definitions in SAFETEA–LU section 5310. Nevertheless, the FHWA and FTA agree that the description of ITS purposes mentioned in the proposed CE in the NPRM, *i.e.*, to improve efficiency or safety, is not intended to exclude ITS activities that have security purposes or that provide passenger convenience. Therefore, to avoid potential misinterpretation, the FHWA and FTA have added the security and passenger convenience to the purposes that may be served by an ITS system that qualifies as a CE.

The same commenter also proposed that additional security projects, that cannot be characterized as ITS projects, such as the construction of a communications center, should also be categorically excluded if it is located on existing transportation right-of-way. The FHWA and FTA have not acted on this suggestion because many security projects, if appropriately sited, would be covered by existing CEs, and a future rulemaking that considers this proposal would have the benefit of more experience with such projects.

The commenter also suggested that the Department of Homeland Security (DHS) and the U.S. Department of Transportation (U.S. DOT) should have a single list of CEs for transportation security projects. The FHWA and FTA have not acted on this suggestion. The NEPA regulations of the CEQ require each Federal agency to have its own implementing procedures specific to its program. As a result, DHS and the two U.S. DOT agencies [FTA and FHWA] have their own separate NEPA procedures.

One commenter suggested the specific mention of ''radio communications systems'' in the CE for ITS activities. In response, FHWA and FTA have added ''radio communications systems'' to the ITS examples included in the regulatory text.

One commenter suggested that the new CE for ITS equipment should provide specific examples of transit-related ITS projects. The list might include items such as automatic vehicle locators, automated passenger counters, computer-aided dispatching systems, radio communication equipment, and

security equipment including cameras in facilities and on buses. The FHWA and FTA agree that the commenter's list gives prime examples of ITS projects that would be covered by the new CE and have added the examples to the regulatory language of this new CE.

The NPRM announced that the FHWA and FTA might designate one or more new CEs for projects that reduce transportation system congestion. The NPRM invited comments on this proposed designation. The FHWA and FTA received eight comments, some supporting the designation of a CE, and some expressing concerns. As noted below, the FHWA and FTA plan to publish a Supplemental Notice of Proposed Rulemaking (SNPRM) so that the public has the benefit of commenting on the actual proposed language for such a CE before the agencies decide whether to finalize it in regulation.

Several commenters expressed support for a new CE. Some indicated that the conversion of existing high occupancy vehicle (HOV) or general-purpose highway lanes into high occupancy/toll (HOT) lanes [3] or standard toll lanes can be accomplished with minimal construction activity beyond the existing highway facility and should qualify as a CE. Two commenters proposed wording for a new CE that would read: ''Conversion of an existing general use lane to an HOV/HOT [High Occupancy Vehicle/High Occupancy Toll] or other toll lane and/or other value pricing concept, along with supporting improvements which require no or minimal right-of-way (less than 1 acre) and result in less than 1 acre of impact to aquatic resource.''

A few commenters expressed concerns regarding the potential some congestion reduction projects might have for adverse environmental impacts that might not meet CE criteria, especially where congestion reduction elements are part of a larger project. Some of those commenters viewed this risk as a basis for limiting the scope of a designated CE. Several commenters correctly noted that where congestion management measures are component parts of larger projects, the characteristics of the larger project often drive the appropriate class of action under NEPA. Two commenters expressed equity concerns about the impact of toll charges on low-income drivers.

After carefully considering all of the comments on this topic, the FHWA and FTA have decided that public comment on the actual language of a CE would be beneficial prior to finalizing it. Thus, the FHWA and FTA will publish an SNPRM that includes language for a specific CE on projects that reduce congestion on the nation's highways. After receiving public comment, the FHWA and FTA would then finalize a CE, if appropriate, with another final rule at that time.

This decision to defer action on this CE until after further public comment in no way limits the ability of the FHWA or FTA to use their authority under 23 CFR 771.117(c) and (d) to determine that congestion management projects meet CE criteria. The FHWA and FTA will continue to utilize that authority for appropriate congestion management projects.[4]

One commenter appears to have misinterpreted the revised CE at paragraph (c)(5) of section 771.117, which has to do with the transfer of Federal lands. The misunderstanding may result from the term ''Federal lands pursuant to 23 U.S.C. 107(d) or 317.'' The cited statutory provisions refer to lands ''owned by the United States.'' The term does not include real property owned by a State or transit agency in which there is Federal financial interest resulting from the use of FHWA or FTA financial assistance to purchase the land. These lands are not ''Federal lands'' within the meaning of this CE.

Two commenters requested a wording change in paragraph (d)(12)(ii) of section 771.117. One commenter wished to emphasize that, at the time of a protective acquisition, it usually is not known whether a property actually will be required for a project. The second commenter stated that the proposed change would provide funding recipients with flexibility. Specifically, both commenters requested a word change in the first sentence from ''is'' to ''may be.'' The FHWA and FTA agree that the change would be helpful and have changed the first sentence of paragraph (d)(12)(ii) of section 771.117 to ''Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site.''

Three commenters proposed removing the last sentence of the description of a protective acquisition that would qualify as a CE. The proposal would allow protective acquisitions solely to avoid increases in the cost of real estate. Another commenter proposed that land acquisition solely to control the cost of right-of-way be allowed under the following conditions: (1) That the use of the acquired property not be changed prior to completion of the NEPA review of the project that would use the property; (2) that the acquisition not prejudice the consideration of alternatives to the project that would use the property; and (3) that the requirements of the Uniform Relocation Act be followed in acquiring the property. The suggested revisions would permit protective acquisitions based on economic reasons alone. The regulation presently permits consideration of cost as an element of justification, but not as the sole reason for a protective acquisition. The proposed changes, which would substantially alter existing limitations in the FHWA and FTA acquisition programs, have not been subjected to review and comment. For that reason, the FHWA and FTA decline to make the suggested revisions. Another commenter opposed the CEs for protective and hardship acquisitions. This commenter said that the project sponsor should be working with the local governmental entity that regulates land use to preserve the transportation corridor through overlay zoning or other land use controls under State or local jurisdiction. The commenter felt that no land should be purchased prior to completion of the NEPA review of the project that would use the land. The FHWA and FTA disagree. These exceptions are allowed under the

[3] An HOV lane, sometimes called a carpool lane, is a lane reserved for the use of carpools, vanpools and buses. HOV lanes usually are located next to the regular, unrestricted (''general purpose'') lanes. HOV lanes enable those who carpool or ride the bus to bypass the traffic in the adjacent, unrestricted lanes. HOT lanes are limited-access, normally barrier-separated highway lanes that provide free or reduced cost access to qualifying HOVs and also provide access to other paying vehicles not meeting passenger occupancy requirements. By using price and occupancy restrictions to manage the number of vehicles traveling on them, HOT lanes maintain volumes consistent with non-congested levels of service during peak travel periods. HOT lanes utilize sophisticated electronic toll collection and traffic information systems that also make variable, real-time toll pricing of non-HOV vehicles possible. For more detailed information on HOV lanes, see *http://ops.fhwa.dot.gov/freewaymgmt/hov.htm* and on HOT lanes, see *http://www.itsdocs.fhwa.dot.gov//JPODOCS/REPTS_TE//13668.html.*

[4] Not all congestion relief projects authorized under Federal law involve a discretionary decision or approval by the FHWA or FTA. If there is no discretionary decision, then NEPA does not apply. For example, the conversion of an HOV lane to a HOT lane pursuant to 23 U.S.C. 166(b)(4) does not, in and of itself, require approval by the FHWA. However, if the project also involves Federal-aid highway funding, the modification of prior FHWA-State agreements affecting the facility, or some other type of action that does require a discretionary FHWA action, then NEPA would apply. For further information on the role of the FHWA in HOV-to-HOT conversion projects, see Federal-aid Highway Program Guidance on High Occupancy Vehicle (HOV) Lanes, June 2008, Federal Highway Administration at *http://www.fhwa.dot.gov/operations/hovguide01.htm.*

existing regulation and are intended for limited use when an extenuating circumstance exists, such as imminent development or hardship on the existing owner. The land-use methods proposed by the commenter would not accomplish the purposes served by the present regulation.

Many commenters proposed additional changes to the CE for, and description of, hardship and protective acquisition. The FHWA and FTA did not propose, and are not making, any additional changes to the CE for hardship and protective acquisition. The description of the terms hardship and protective acquisition formerly appeared in footnotes and now have been moved, verbatim, into the regulatory text, with the one very minor exception discussed above. This change in the placement of the text on these CEs was made at the request of the Office of the **Federal Register** to conform with current standards for the format of regulations.

Several commenters expressed support for the proposal to add a CE for the acquisition of pre-existing railroad right-of-way pursuant to 49 U.S.C. 5324(c). Since the time that FTA proposed this provision in the NPRM, FTA has become aware of the need to review a project sponsor's plans to purchase right-of-way under this CE to ensure that the statutory provision is implemented properly. Further, the CE concerns early purchase of right-of-way and is therefore similar to the CE for a hardship or protective purchase. The railroad right-of-way CE logically belongs in the same part of the CE regulation as the other early purchase CE. As a result, FTA has decided to list the CE for the acquisition of pre-existing railroad right-of-way in paragraph (d) of section 771.117.

One commenter suggested that the FHWA and FTA consider a new CE for transit projects that alleviate urban congestion, such as bus rapid transit (BRT) operating on current bus routes or on new routes that are well-integrated into the transit network and have minimal negative impacts. The FHWA and FTA are not adding the proposed CE because BRT projects located on existing streets with stations on sidewalks or other public right-of-way would be covered by existing CEs which take into account that there are no unusual circumstances indicating that a significant impact could ensue. Once the FHWA and FTA have a larger body of experience with a greater variety of BRT projects, we will consider updating our regulations as necessary.

One commenter suggested that rehabilitation of an existing transit station should be moved from the list of examples in paragraph (d) of section 771.117 that require documentation to show that the project's design or siting is proper and that no unusual circumstances exist, to the list of automatic CEs in paragraph (c) of section 771.117 that require no documentation other than a project description to show that the CE applies. The FHWA and FTA note that many such transit stations in older subway systems are on or are eligible for the National Register of Historic Places, or have elements such as antique tile walls that so qualify. Therefore, the FHWA and FTA believe that it is appropriate to require documentation that addresses not only the CE requirements but also any Section 106 or Section 4(f) implications of the rehabilitation. Therefore, transit station rehabilitation will remain in the list of CE examples in paragraph (d) of section 771.117. The FHWA and FTA may reconsider this decision in a future rulemaking when the suggested revision, which may be of high public interest, will be subject to an opportunity for public comment.

One commenter proposed that the CE lists be expanded to include transit activities that became eligible for FTA funding after 1987, when the last major revision of 23 CFR part 771 occurred. The CEs suggested include preventive maintenance, as defined in Federal transit law, ADA-required transit services, and park-and-ride lots not located on the fringe of a transportation corridor. The comment also recommended moving certain CEs in the list of examples in paragraph (d) of section 771.117 requiring documentation to show that the CE conditions are met, to the list of automatic CEs in paragraph (c) of section 771.117. FTA agrees with this comment in concept, but has not acted on it in this rulemaking. Although the regulation would be cleaner if it explicitly listed all of the activities that FTA commonly funds that qualify as CEs, the commenter correctly points out that these activities are generally covered by paragraph (d) of section 771.117. FTA did not provide substantiation of the proposed CEs in the NPRM, and as a result, the proposed CEs have not been subjected to public review and comment. The FHWA and FTA believe another, more comprehensive rulemaking would be necessary to address the proposed changes.

One commenter suggested a number of changes to section 771.117, which governs categorical exclusions. One suggestion was that the FHWA and FTA abandon the creation of new categories of CEs in favor of allowing recipients to determine whether a project qualifies for CE status. The law places responsibility for NEPA compliance on the Secretary of Transportation and the agencies under the Secretary. The change requested by the commenter exceeds the two agencies' [FHWA and FTA] legal authority.

One commenter suggested that the FHWA and FTA add a CE for a situation where a project affects an isolated wetland that is not within the regulatory jurisdiction of the U.S. Army Corps of Engineers. The applicability of other Federal laws, such as the Clean Water Act, is a consideration in determining the NEPA class of action, but it is only one of many considerations. Thus, the FHWA and FTA believe that establishing criteria under only one Federal law would not be appropriate and would not elicit consideration of the full magnitude and context of an action in accordance with NEPA.

The same commenter suggested that the FHWA and FTA require the agencies to establish a deadline for CE completion. The FHWA and FTA believe that good project management practices include having and working towards a project schedule. However, the FHWA and FTA do not believe that embedding a deadline requirement in the regulation governing CEs is an appropriate mechanism to achieve that goal. A deadline could not be set without considering all of the individual project situations that factor into developing an appropriate schedule. Agencies are currently free to set and work towards a deadline. Further, any establishment of a deadline that would be binding on other Federal agencies must be accomplished through congressional action.

Finally, the commenter indicated that the FHWA and FTA should create a preference for CEs over EAs and provide other clarifications concerning when a CE should be used instead of an EA. The FHWA and FTA disagree with the commenter. The present regulations in section 771.117 provide an appropriate definition of what constitutes a CE and the standards for determining whether a project qualifies as a CE. Sections 771.117 and 771.119, when read together with the CEQ regulation, define when an EA should be performed. The determination of the NEPA class of action applicable to a project is made based on the facts of the project, not the preference for one process or the other.

Through an oversight, the NPRM failed to include asterisks at the end of the amendatory language for section 771.117. The FHWA and FTA did not, however, intend to delete paragraph (e)

of section 771.117, and the paragraph will remain unchanged by this final rule. The asterisks have been added to the amendatory language of this final rule to denote this.

Section 771.119 Environmental Assessments

One commenter suggested that the FHWA and FTA explicitly encourage the use of the environmental review procedures detailed in 23 U.S.C. 139 for EA projects. The FHWA and FTA agree that many of the procedures contained in 23 U.S.C. 139 could be beneficial to a project. Funding recipients may request the use of participating agency designations, scheduling, and other procedures similar to those established in 23 U.S.C. 139 on any project. Consequently, the FHWA and FTA continue to believe that the application of the 23 U.S.C. 139 procedures to non-EIS projects is best determined on a case-by-case basis.

Two commenters objected to the proposed deletion of the sentence in the existing regulation that applies only to FTA projects and that allows an applicant to make an EA available for public review and comment before FTA has reviewed and approved the EA for public inspection. The commenters suggested that the required FTA approval would delay projects unnecessarily. FTA disagrees. In FTA's experience, the release of an EA without an FTA review often results in an incomplete or insufficient document that fails to elicit meaningful public and interagency comment for NEPA purposes and cannot support a FONSI by FTA. This situation causes delays and duplication of effort when the EA must be corrected, re-advertised, and re-released for public comment. For an adequate EA, the time required for an FTA approval would generally be the same whether that review precedes the release of the EA or precedes the issuance of a FONSI. As proposed in the NPRM, FTA is deleting the sentence that formerly permitted an applicant to release an EA without FTA approval.

Section 771.123 Draft Environmental Impact Statements

Several commenters suggested that paragraph (b) of section 771.123 include ''purpose and need'' among the issues to be addressed during the scoping process. The FHWA and FTA agree and have made the suggested change. One of these commenters suggested that this paragraph also assert the primacy of the lead agencies in crafting the purpose and need and in determining the range of alternatives. The FHWA and FTA have not acted on this recommendation because it is appropriately dealt with in guidance. In 2003, CEQ issued a guidance letter, available at: *http://www.nepa.gov/nepa/regs/CEQPurpose2.pdf,* which states: ''In the case of a proposal intended to address transportation needs, joint lead or cooperating agencies should afford substantial deference to the DOT agency's articulation of purpose and need. 49 U.S.C. 101(b)(5).'' The letter recognizes that Federal agencies acting under their own authorizing legislation separate from NEPA may have independent responsibilities and concerns. Section 139 of Title 23, U.S. Code, states that the lead agencies determine the purpose and need and range of alternatives for any environmental document whose preparation is their responsibility. It does not override the statutory responsibilities of other Federal agencies, though it does establish a process that is intended to surface and resolve differences early. The regulatory assertion of primacy suggested by the commenter would not override other Federal laws.

One commenter requested more flexibility or clarification regarding the role of a local agency in the development of an EIS. The FHWA and FTA look to the agencies that are the direct recipients of Federal funding to prepare environmental review documents under the oversight and supervision of the FHWA or FTA, as applicable. For the FHWA, this typically is the State DOT. For FTA, the direct recipient of funding typically is a metropolitan transit agency. In the case of the FHWA, the State DOT may work with local government agencies that are project sponsors, but the State DOT remains responsible to the FHWA for the environmental review documents. The relationship between the State DOT and the local agency in such cases is similar to the relationship between the FHWA and the State DOT. The State DOT must supervise, oversee, and independently evaluate the local agency's preparation of the environmental review documents. A local agency that is not a direct recipient of Federal funds may be a joint lead agency at the discretion of the required lead agencies in accordance with the provisions of 23 U.S.C. 139(c)(2) and the CEQ regulation, and, as a joint lead agency, may prepare the EIS and other environmental review documents in accordance with those provisions.

One commenter suggested that an applicant be required to file a declaration of its intention to build a project with the chief executive of all political subdivisions in which the action is located. The FHWA and FTA believe that the requirements of scoping and of identifying participating agencies and inviting their involvement are adequate in this regard and have not made the suggested change.

FTA received one comment that supported the NPRM's proposal to delete the requirement for a locally preferred alternative report following the draft EIS. The final rule omits that requirement, as it is more appropriately addressed in the regulation that implements FTA's New Starts program at 49 CFR part 611.

FTA also changed the terminology in paragraph (j) of section 771.123 to ''major fixed guideway capital project'' to conform to current law. The new term is defined in Federal transit law at 49 U.S.C. 5309(a)(3).

Section 771.125 Final Environmental Impact Statements

The FHWA and FTA revised paragraph (a) of section 771.125 for consistency with SAFETEA–LU section 6002. In preparing a Final EIS, the responsibilities of the Administration under the former rule are now the responsibility of the lead agencies. The paragraph was revised to reflect this change.

Two commenters suggested that paragraph (c)(1)(vi) of section 771.125 in the NPRM, which provided that issues other than those listed could warrant review of an EIS by the FHWA or FTA headquarters, be deleted because it would lead to more Final EISs being reviewed in the FHWA or FTA headquarters office, resulting in unnecessary delays. The FHWA and FTA have removed the subject paragraph from the final rule, as requested, but for a different reason. The paragraph was redundant because the first sentence of paragraph (c)(1) of section 771.125 accomplishes the same purpose, that of stating the ultimate authority of the FHWA and FTA headquarters offices over the NEPA process. The delegations of the authority to make NEPA decisions to the FHWA and FTA field offices does not absolve the FHWA and FTA Administrators of their responsibilities under NEPA and other environmental laws. The FHWA and FTA headquarters offices, under the direction of each respective Administrator, must retain the authority to review a Final EIS in headquarters before it is signed, whenever the Administrator deems it appropriate. Without the addition of paragraph (c)(1)(vi) of section 771.125, as was proposed in the NPRM, paragraph (c)(1) of section 771.125 remains unchanged.

FTA proposed in the NPRM to delete paragraph (c)(3) of section 771.125 because the requirement was considered perfunctory due to the increase in size of the New Starts program and because the list of reasons in paragraph (c)(1) of section 771.125 already accomplishes this purpose. No comment was received on this proposed change, so the paragraph is deleted in this final rule as proposed in the NPRM.

One commenter suggested that the FHWA and FTA revise the regulation at section 771.125 on Final EISs to require that a Final EIS provide specific permit status information, including the record of coordination and interaction with resource agencies. The FHWA and FTA do not believe such change is warranted. Part 771 supplements the CEQ regulation, which already describes similar requirements. The CEQ requirements include the circulation of the documents (see, *e.g.*, 40 CFR 1502.19), documented responses to comments received (40 CFR 1503.4), and a listing of required Federal permits (40 CFR 1502.25(b)). The FHWA and FTA believe that the CEQ requirements are sufficient and there is no need to replicate them in part 771. To the extent that the commenter calls for more detailed documentation of interactions with resource agencies than presently is required, the FHWA and FTA believe that decision is best made on a case-by-case basis because the usefulness of such detailed information varies by project.

Section 771.127 Record of Decision

The FHWA and FTA made minor stylistic changes in this section.

Section 771.129 Re-evaluations

The FHWA and FTA had proposed to re-order the paragraphs in this section without modification. Upon further reflection, the original order seems preferable because the original regulation addressed the three situations in the sequential order that they occur in the project development process. In responding to the comment on paragraph (a) of section 771.113 discussed above, the FHWA and FTA noticed that the same comment would apply to the original paragraph (c) of section 771.129 (paragraph (a) of section 771.129 in the NPRM). That paragraph referred to ''approval of the EIS, FONSI, or CE designation'' as the completion of the NEPA process, when it should have referred to ''approval of the ROD, FONSI, or CE designation.'' The FHWA and FTA have accordingly changed ''EIS'' to ''ROD'' here as well.

One commenter requested that section 771.129 be further revised to clarify what happens if the CE or FONSI needs updating but the changes do not cause the need for a new or supplemental document. The FHWA and FTA believe paragraph (c) of section 771.129 of the final rule adequately covers this situation and does not need further revision. Under this provision an applicant will contact the Administration to determine if the ROD, CE or FONSI needs updating and the Administration shall decide when the consultations should be documented.

Section 771.130 Supplemental Environmental Impact Statements

In paragraph (a)(2) of section 771.130, the FHWA and FTA corrected a typographical error in the former regulation.

In paragraph (e) of section 771.130, the terminology was changed to conform with current Federal transit law as discussed previously for paragraph (j) of section 771.123.

Section 771.139 Limitations on Claims

Three commenters asked for clarification about the applicability of the new limitations on claims provision (23 U.S.C. 139(l); amplified in section 771.139 in the NPRM). Specifically, the commenters asked (1) whether the limitations provision applies to all classes of action (EISs, EAs, and CEs) without regard to whether the projects had used the environmental review process procedures in 23 U.S.C. 139; (2) whether the limitations provision applies to reevaluations (section 771.129) and tiered EISs (paragraph (g) of section 771.111); and (3) whether clarifications could be added to part 771 to foreclose a possible interpretation of section 23 U.S.C. 139 (l)(2) as requiring a supplemental environmental review document each time new information arises. The FHWA and FTA do not believe that any of the three commenters raised issues that require regulatory action at this time. As the FHWA and FTA previously have indicated in guidance (see Question 11 in Appendix E of ''SAFETEA–LU Environmental Review Process: Final Guidance,'' issued November 15, 2006, available at *http://www.fhwa.dot.gov/hep/section6002/index.htm*), the agencies believe that Congress' intent in adopting the limitations on claims provision was to permit it to be applied to any Federal agency decision that is necessary in order for any highway or public transportation capital project to move forward to implementation. This means it can be applied to any project, regardless of its NEPA class of action. In all cases, the decision whether to publish a limitations notice should be made on a case-by-case basis as discussed in Appendix E to the above-referenced final guidance on the implementation of 23 U.S.C. 139.

As described in the above discussion on section 771.129, reevaluations are used to address a variety of circumstances. The limitations provision may be applied to a reevaluation decision, but it would not be needed for the vast majority of reevaluations which simply confirm that there is neither any change in the project nor any new information that requires additional analysis that could affect a prior project decision. The FHWA and FTA also note that when legal challenges to a project otherwise are foreclosed by law, such as by the expiration of a previous limitations notice, the agencies' view is that only the issues specifically addressed in the reevaluation may be challenged. Neither the mere fact a reevaluation is done, nor the act of publishing a limitations notice for the reevaluation, would serve to reopen other issues to judicial review. *See Highland Village Parents Group* v. *U.S. Federal Highway Admin.,* No. 4:07–CV–548, 2008 WL 2462944 (E.D. Tex. June 13, 2008).

In the case of decisions based on a tier 1 EIS, a limitations notice may be issued for those decisions that the agency considers to be final and that the agency does not expect to revisit in tier 2 proceedings, such as elimination of modal alternatives or project corridors, absent significant new information. Particular care is required when making a determination as to which decisions are final and subject to a limitations notice for a tier 1 document. For FHWA notices, pre-publication consultation with headquarters staff is encouraged. (FTA notices are always prepared and reviewed by FTA headquarters staff.)

Finally, the FHWA and FTA agree that SAFETEA–LU did not alter the standards for deciding when a supplemental EA or EIS is required. Section 139(l)(2) of Title 23, U.S. Code, addresses the consideration of new information received after the close of a comment period. That section also makes it clear that a decision based on a supplemental EA or EIS is a separate final agency action and can be the subject of a 180-day notice.

Regulatory Notices

All comments received are available for examination in the docket at *http://www.regulations.gov.* All comments, including a number of comments received after the comment closing date of October 9, 2007, have been fully considered in this final rule.

Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This final action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA and the FTA have determined that this final action will not have sufficient federalism implications to warrant additional consultation.. The agencies have also determined that this final action will not preempt any State law or State regulation or affect the States' ability to discharge traditional government functions.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. The FHWA and FTA have analyzed this final rule under Executive Order 13175 and believe that this final action will not have substantial, direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal impact statement is not required. The FHWA and FTA received no comments on the NPRM from Indian tribal governments.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), the FHWA and FTA must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. The FHWA and FTA certify that this final rule will not have a significant economic impact on substantial number of small entities.

National Environmental Policy Act

The Council on Environmental Quality does not direct agencies to prepare a NEPA analysis or document before establishing Agency regulations that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that require preparation of an EIS; those that require preparation of an EA; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA regulations assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd,* 230 F.3d 947, 954–55 (7th Cir. 2000).

Furthermore, this final action will not have any effect on the quality of the environment under the NEPA and is categorically excludable under the current 23 CFR 771.117(c)(20). This final action is intended to incorporate new statutory requirements into the agencies' regulations and to add new CEs to the NEPA process. Additionally, this final rule seeks to improve the description of the procedures and to provide clarification with respect to the interpretation of certain provisions.

Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of 49 U.S.C. 5323(b), 49 U.S.C. 5324(c), 23 U.S.C. 139, 23 U.S.C. 325, 23 U.S.C. 326, 23 U.S.C. 327, section 6002 of SAFETEA–LU, and section 6010 of SAFETEA–LU, the last of which required the Secretary of Transportation to initiate rulemaking to establish, as appropriate, CEs for ITS projects. In addition, this NPRM implements changes made by the creation of 23 U.S.C. 139 to the process by which the FHWA and FTA comply with NEPA.

Executive Order 12866 and DOT Regulatory Policies and Procedures

The FHWA and FTA have determined that this action is not considered a significant regulatory action under Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032).

Executive Order 12866 requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' The FHWA and FTA anticipate that the direct economic impact of this rulemaking will be minimal. Some of the changes that this rule makes are requirements mandated in SAFETEA–LU. The FHWA and FTA also consider this rule as a means to clarify the existing regulatory requirements. These changes will not adversely affect, in any material way, any sector of the economy. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This notice does not propose any new information collection burdens.

Regulation Identifier Number (RIN)

The U.S. DOT assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

Privacy Act

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

Unfunded Mandates Reform Act of 1995

This final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This final rule will not result in the expenditure by State, local, and tribal governments,

in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 12630 (Taking of Private Property)

The FHWA and FTA have analyzed this final rule under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights. The FHWA and FTA do not anticipate that this final rule will effect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13211 (Energy Effects)

The FHWA and FTA have analyzed this action under Executive Order 13211. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. The FHWA and FTA have determined that this is not a significant energy action under that order, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 13045 (Protection of Children)

The FHWA and FTA have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA and FTA certify that this final rule is not an economically significant rule and will not cause an environmental risk to health or safety that may disproportionately affect children.

List of Subjects

23 CFR Part 771

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and recordkeeping requirements.

49 CFR Part 622

Environmental impact statements, Grant programs—transportation, Public transit, Recreation areas, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, amend Chapter I of Title 23 and Chapter VI of Title 49, of the Code of Federal Regulations as set forth below:

Federal Highway Administration

Title 23—Highways

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

■ 1. Revise the authority citation for part 771 to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 106, 109, 128, 138, 139, 315, 325, 326, and 327; 49 U.S.C. 303, 5301(e), 5323(b), and 5324; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.48(b) and 1.51.

■ 2. Revise § 771.101 to read as follows:

§ 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and supplements the NEPA regulation of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508 (CEQ regulation). Together these regulations set forth all FHWA, FTA, and Department of Transportation (DOT) requirements under NEPA for the processing of highway and public transportation projects. This regulation also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, 139, 325, 326, 327, and 49 U.S.C. 303, 5301(e), 5323(b), and 5324(b) and (c).

■ 3. Amend § 771.105 by revising paragraph (a) and its footnote to read as follows:

§ 771.105 Policy.

* * * * *

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental review document required by this regulation.[1]

* * * * *

[1] FHWA and FTA have supplementary guidance on environmental review documents and procedures for their programs. This guidance includes: the FHWA Technical Advisory T6640.8A, October 30, 1987; ''SAFETEA–LU Environmental Review Process: Final Guidance,'' November 15, 2006; Appendix A to 23 CFR part 450 titled ''Linking the Transportation Planning and NEPA Processes''; and ''Transit Noise and Vibration Impact Assessment,'' May 2006. The FHWA and the FTA supplementary guidance, and any updated versions of the guidance, are available from the respective FHWA and FTA headquarters and field offices as prescribed in 49 CFR part 7 and on their respective Web sites at *http://www.fhwa.dot.gov* and *http://www.fta.dot.gov,* or in hard copy by request.

■ 4. Amend § 771.107 by revising paragraph (d) and adding paragraphs (f), (g), (h), and (i) to read as follows:

§ 771.107 Definitions.

* * * * *

(d) *Administration.* The FHWA or FTA, whichever is the designated Federal lead agency for the proposed action. A reference herein to the Administration means the State when the State is functioning as the FHWA or FTA in carrying out responsibilities delegated or assigned to the State in accordance with 23 U.S.C. 325, 326, or 327, or other applicable law.

* * * * *

(f) *Applicant.* Any State, local, or federally-recognized Indian tribal governmental unit that requests funding approval or other action by the Administration and that the Administration works with to conduct environmental studies and prepare environmental review documents. When another Federal agency, or the Administration itself, is implementing the action, then the lead agencies (as defined in this regulation) may assume the responsibilities of the applicant in this part. If there is no applicant, then the Federal lead agency will assume the responsibilities of the applicant in this part.

(g) *Lead agencies.* The Administration and any other agency designated to serve as a joint lead agency with the Administration under 23 U.S.C. 139(c)(3) or under the CEQ regulation.

(h) *Participating agency.* A Federal, State, local, or federally-recognized Indian tribal governmental unit that may have an interest in the proposed project and has accepted an invitation to be a participating agency, or, in the case of a Federal agency, has not declined the invitation in accordance with 23 U.S.C. 139(d)(3).

(i) *Project sponsor.* The Federal, State, local, or federally-recognized Indian tribal governmental unit, or other entity, including any private or public-private entity that seeks an Administration action.

■ 5. Amend § 771.109 by removing the words ''by the Administration'' from paragraph (a)(3) and by revising paragraphs (c) and (d) to read as follows:

§ 771.109 Applicability and responsibilities.

* * * * *

(c) The following roles and responsibilities apply during the environmental review process:

(1) The lead agencies are responsible for managing the environmental review process and the preparation of the

appropriate environmental review documents.

(2) Any applicant that is a State or local governmental entity that is, or is expected to be, a direct recipient of funds under title 23, U.S. Code, or chapter 53 of title 49 U.S. Code, for the action shall serve as a joint lead agency with the Administration in accordance with 23 U.S.C. 139, and may prepare environmental review documents if the Administration furnishes guidance and independently evaluates the documents.

(3) The Administration may invite other Federal, State, local, or federally-recognized Indian tribal governmental units to serve as joint lead agencies in accordance with the CEQ regulation. If the applicant is serving as a joint lead agency under 23 U.S.C. 139(c)(3), then the Administration and the applicant will decide jointly which other agencies to invite to serve as joint lead agencies.

(4) When the applicant seeks an Administration action other than the approval of funds, the role of the applicant will be determined by the Administration in accordance with the CEQ regulation and 23 U.S.C. 139.

(5) Regardless of its role under paragraphs (c)(2) through (c)(4) of this section, a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or a local unit of government acting through a statewide agency, that meets the requirements of section 102(2)(D) of NEPA, may prepare the EIS and other environmental review documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(6) The role of a project sponsor that is a private institution or firm is limited to providing technical studies and commenting on environmental review documents.

(d) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 106, it shall be the responsibility of the State highway agency to ensure that the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental review documents unless the State requests and receives written FHWA approval to modify or delete such mitigation features.

■ 6. Amend § 771.111 by revising paragraphs (a), (b), (c), (d), (h)(1), and (i) and adding paragraphs (h)(2)(vii) and (h)(2)(viii) to read as follows:

§ 771.111 Early coordination, public involvement, and project development.

(a)(1) Early coordination with appropriate agencies and the public aids in determining the type of environmental review documents an action requires, the scope of the document, the level of analysis, and related environmental requirements. This involves the exchange of information from the inception of a proposal for action to preparation of the environmental review documents. Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements and of the need for specific studies and findings which would normally be developed concurrently with the environmental review documents.

(2) The information and results produced by, or in support of, the transportation planning process may be incorporated into environmental review documents in accordance with 40 CFR 1502.21 and 23 CFR 450.212 or 450.318.[3]

(b) The Administration will identify the probable class of action as soon as sufficient information is available to identify the probable impacts of the action.

(c) When both the FHWA and FTA are involved in the development of a project, or when the FHWA or FTA acts as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis.

(d) During the early coordination process, the lead agencies may request other agencies having an interest in the action to participate, and must invite such agencies if the action is subject to the project development procedures in 23 U.S.C. 139.[4] Agencies with special expertise may be invited to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

* * * * *

(h) * * *

(1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 139 and CEQ regulation.

(2) * * *

(vii) An opportunity for public involvement in defining the purpose and need and the range of alternatives, for any action subject to the project development procedures in 23 U.S.C. 139.

(viii) Public notice and an opportunity for public review and comment on a Section 4(f) *de minimis* impact finding, in accordance with 49 U.S.C. 303(d).[5]

* * * * *

(i) Applicants for capital assistance in the FTA program achieve public participation on proposed projects by holding public hearings and seeking input from the public through the scoping process for environmental review documents. For projects requiring EISs, an early opportunity for public involvement in defining the purpose and need for action and the range of alternatives must be provided, and a public hearing will be held during the circulation period of the draft EIS. For other projects that substantially affect the community or its public transportation service, an adequate opportunity for public review and comment must be provided, pursuant to 49 U.S.C. 5323(b).

* * * * *

■ 7. Amend § 771.113 by revising paragraphs (a) introductory text, (a)(2) and (b) and adding paragraph (d) to read as follows:

§ 771.113 Timing of Administration activities.

(a) The lead agencies, in cooperation with the applicant (if not a lead agency), will perform the work necessary to complete a finding of no significant impact (FONSI) or a record of decision (ROD) and comply with other related environmental laws and regulations to the maximum extent possible during the NEPA process. This work includes environmental studies, related engineering studies, agency coordination and public involvement. However, final design activities, property acquisition, purchase of construction materials or rolling stock, or project construction shall not proceed until the following have been

[3] On February 14, 2007, FHWA and FTA issued guidance on incorporating products of the planning process into NEPA documents as Appendix A of 23 CFR part 450. This guidance, titled ''Linking the Transportation Planning and NEPA Processes,'' is available on the FHWA Web site at *http://www.fhwa.dot.gov* or in hard copy upon request.

[4] The FHWA and FTA have developed guidance on 23 U.S.C. Section 139 titled ''SAFETEA–LU Environmental Review Process: Final Guidance,'' November 15, 2006, and available at *http://www.fhwa.dot.gov* or in hard copy upon request.

[5] The FHWA and FTA have developed guidance on Section 4(f) de minimis impact findings titled ''Guidance for Determining *De Minimis* Impacts to Section 4(f) Resources,'' December 13, 2005, which is available at *http://www.fhwa.dot.gov* or in hard copy upon request.

completed, except as otherwise provided in law or in paragraph (d) of this section:

* * * * *

(2) For actions proposed for FHWA funding, the Administration has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;

* * * * *

(b) Completion of the requirements set forth in paragraphs (a)(1) and (2) of this section is considered acceptance of the general project location and concepts described in the environmental review documents unless otherwise specified by the approving official.

* * * * *

(d) The prohibition in paragraph (a)(1) of this section is limited by the following exceptions:

(1) Exceptions for hardship and protective acquisitions of real property are addressed in paragraph (d)(12) of § 771.117.

(2) Paragraph (d)(13) of § 771.117 contains an exception for the acquisition of pre-existing railroad right-of-way for future transit use in accordance with 49 U.S.C. 5324(c).

(3) FHWA regulations at 23 CFR 710.503 establish conditions for FHWA approval of Federal-aid highway funding for hardship and protective acquisitions.

(4) FHWA regulations at 23 CFR 710.501 address early acquisition of right-of-way by a State prior to the execution of a project agreement with the FHWA or completion of NEPA. In paragraphs (b) and (c) of § 710.501, the regulation establishes conditions governing subsequent requests for Federal-aid credit or reimbursement for the acquisition. Any State-funded early acquisition for a Federal-aid highway project where there will not be Federal-aid highway credit or reimbursement for the early acquisition is subject to the limitations described in the CEQ regulations at 40 CFR 1506.1 and other applicable Federal requirements.

(5) A limited exception for rolling stock is provided in 49 U.S.C. 5309(h)(6).

§ 771.115 [Amended]

■ 8. Amend § 771.115 in paragraph (b) by replacing the word ''cumulative'' with the word ''cumulatively''.

■ 9. Amend § 771.117 as follows:

■ a. In paragraph (a), remove the word ''significnt'' and add the word ''significant'' in its place.

■ b. Revise paragraphs (c)(5) and (d)(12) and add paragraphs (c)(21) and (d)(13) to read as follows:

§ 771.117 Categorical exclusions.

* * * * *

(c) * * *

(5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.

* * * * *

(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

* * * * *

(d) * * *

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel which may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(13) Acquisition of pre-existing railroad right-of-way pursuant to 49 U.S.C. 5324(c). No project development on the acquired railroad right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.

* * * * *

■ 10. Amend § 771.119 as follows:

■ a. In paragraph (c), remove the second sentence.

■ b. In paragraph (g), capitalize the word ''administration''.

■ c. Add paragraph (j) to read as follows:

§ 771.119 Environmental assessments.

* * * * *

(j) If the Administration decides to apply 23 U.S.C. 139 to an action involving an EA, then the EA shall be prepared in accordance with the applicable provisions of that statute.

■ 11. Amend § 771.123 by revising paragraphs (a), (b), (c), (d), (i), and (j) to read as follows:

§ 771.123 Draft environmental impact statements.

(a) A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the applicant, after consultation with any project sponsor that is not the applicant, has notified the Administration in accordance with 23 U.S.C. 139(e) and the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent (40 CFR 1508.22) for publication in the **Federal Register**. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the Notice of Intent, the lead agencies, in cooperation with the applicant (if not a lead agency), will begin a scoping process which may take into account any planning work already accomplished, in accordance with 23 CFR 450.212 or 450.318. The scoping process will be used to identify the purpose and need, the range of alternatives and impacts, and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For the FHWA, scoping is normally achieved through public and agency involvement procedures required by § 771.111. For FTA, scoping is achieved by soliciting agency and public responses to the action by letter or by holding scoping meetings. If a scoping meeting is to be held, it should be announced in the Administration's Notice of Intent and by appropriate means at the local level.

(c) The draft EIS shall be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive Orders to the extent appropriate at this stage in the environmental process.

(d) Any of the lead agencies may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures and with 40 CFR 1506.5(c).

* * * * *

(i) The **Federal Register** public availability notice (40 CFR 1506.10) shall establish a period of not fewer than 45 days nor more than 60 days for the return of comments on the draft EIS unless a different period is established in accordance with 23 U.S.C. 139(g)(2)(A). The notice and the draft EIS transmittal letter shall identify where comments are to be sent.

(j) For major new fixed guideway capital projects proposed for FTA funding, FTA may give approval to begin preliminary engineering on the principal alternative(s) under consideration after circulation of a draft EIS and consideration of comments received. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures. These studies will be used to prepare the final EIS or, where appropriate, a supplemental draft EIS.

■ 12. Amend § 771.125 by removing paragraph (c)(3) and revising paragraphs (a)(1) and (e) to read as follows:

§ 771.125 Final environmental impact statements.

(a)(1) After circulation of a draft EIS and consideration of comments received, a final EIS shall be prepared by the lead agencies, in cooperation with the applicant (if not a lead agency). The final EIS shall identify the preferred alternative and evaluate all reasonable alternatives considered. It shall also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement, and describe the mitigation measures that are to be incorporated into the proposed action. Mitigation measures presented as commitments in the final EIS will be incorporated into the project as specified in paragraphs (b) and (d) of § 771.109. The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that their requirements can be met.

* * * * *

(e) Approval of the final EIS is not an Administration action as defined in paragraph (c) of § 771.107 and does not commit the Administration to approve any future grant request to fund the preferred alternative.

* * * * *

§ 771.127 [Amended]

■ 13. Amend § 771.127 as follows:

■ a. In paragraph (a), remove the words ''record of decision (ROD)'' and add the word ''ROD'' in their place.

■ b. In paragraph (a), remove the word ''chapter'' and add the word ''title'' in its place.

§ 771.129 [Amended]

■ 14. Amend § 771.129 as follows:

■ a. In paragraph (a), remove the number ''3'' and add the word ''three'' in its place.

■ b. In paragraph (c), remove the word ''EIS'' and add the word ''ROD'' in its place.

■ 15. Amend § 771.130 as follows:

■ a. In paragraph (a)(2), revise the word ''bearings'' to read ''bearing''.

■ b. Revise the first sentence of paragraph (e) to read as follows:

§ 771.130 Supplemental environmental impact statements.

* * * * *

(e) A supplemental draft EIS may be necessary for major new fixed guideway capital projects proposed for FTA funding if there is a substantial change in the level of detail on project impacts during project planning and development. * * *

* * * * *

■ 16. Amend § 771.133 by revising the last sentence to read as follows:

§ 771.133 Compliance with other requirements.

* * * The Administration's approval of an environmental document constitutes its finding of compliance with the report requirements of 23 U.S.C. 128.

■ 17. Add § 771.139 to read as follows:

§ 771.139 Limitations on Actions.

Notices announcing decisions by the Administration or by other Federal agencies on a transportation project may be published in the **Federal Register** indicating that such decisions are final within the meaning of 23 U.S.C. 139(*l*). Claims arising under Federal law seeking judicial review of any such decisions are barred unless filed within 180 days after publication of the notice. This 180-day time period does not lengthen any shorter time period for seeking judicial review that otherwise is established by the Federal law under which judicial review is allowed.[6] This provision does not create any right of judicial review or place any limit on filing a claim that a person has violated the terms of a permit, license, or approval.

Federal Transit Administration

Title 49—Transportation

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Subpart A—Environmental Procedures

■ 18. Revise the authority citation for part 622 to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 303, 5301(a) and (e), 5323(b), and 5324; 23 U.S.C. 139 and 326; Pub. L. 109–59, 119 Stat. 1144, sections 6002 and 6010; 40 CFR parts 1500–1508; 49 CFR 1.51.

Issued in Washington, DC this 17th day of March, 2009.

Jeffrey F. Paniati,

Acting Deputy Administrator, Federal Highway Administration.

Matthew J. Welbes,

Acting Deputy Administrator, Federal Transit Administration.

[FR Doc. E9–6144 Filed 3–23–09; 8:45 am]

BILLING CODE 4910–57–P

[6] The FHWA published a detailed discussion of US DOT's interpretation of 23 U.S.C. 139(*l*), together with information applicable to FHWA projects about implementation procedures for 23 U.S.C. 139(*l*), in Appendix E to the ''SAFETEA-LU Environmental Review Process: Final Guidance,'' dated November 15, 2006. The implementation procedures in Appendix E apply only to FHWA projects. The section 6002 guidance, including Appendix E, is available at *http://www.fhwa.dot.gov/*, or in hard copy by request.

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