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Presidential Documents

Title 3—

The President

Notice of July 16, 2009

Continuation of the National Emergency With Respect To the Former Liberian Regime of Charles Taylor

On July 22, 2004, by Executive Order 13348, the President declared a national emergency and ordered related measures, including the blocking of the property of certain persons connected to the former Liberian regime of Charles Taylor, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of former Liberian President Charles Taylor and other persons, in particular their unlawful depletion of Liberian resources and their removal from Liberia and secreting of Liberian funds and property, which have undermined Liberia's transition to democracy and the orderly development of its political, administrative, and economic institutions and resources. The President further noted that the Comprehensive Peace Agreement signed on August 18, 2003, and the related cease-fire had not yet been universally implemented throughout Liberia, and that the illicit trade in round logs and timber products was linked to the proliferation of and trafficking in illegal arms, which perpetuated the Liberian conflict and fueled and exacerbated other conflicts throughout West Africa.

The actions and policies of Charles Taylor and others have left a legacy of destruction that continues to undermine Liberia's transformation and recovery. Because the actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on July 22, 2004, and the measures adopted on that date to deal with that emergency, must continue in effect beyond July 22, 2009. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13348.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
July 16, 2009.

[FR Doc. E9–17373
Filed 7–20–09; 8:45 am]
Billing code 3195–W9–P

Presidential Documents

Memorandum of July 17, 2009

Assignment of Reporting Functions Under the Supplemental Appropriations Act, 2009

Memorandum for the Secretary of State[,] the Secretary of Defense[,] the Attorney General[, and] the Director of National Intelligence

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign the authority to perform the functions conferred upon the President by sections 319(a), (c), and (d) and sections 14103(d), (e), and (f) of the Supplemental Appropriations Act, 2009 (Public Law 111–32), as follows:

1. To the Attorney General, of providing to the Congress the reports specified in sections 319(a), 319(c)(1)-(3), and 14103(f), as well as the plan specified in section 14103(d);

2. To the Director of National Intelligence, in consultation with the Secretary of Defense, of providing to the Congress the report specified in sections 319(a), 319(c)(4)-(5), and 319(d); and

3. To the Secretary of State, in consultation with the Secretary of Defense, of providing to the Congress the information specified in section 14103(e).

The Attorney General is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, July 17, 2009.

[FR Doc. E9–17451
Filed 7–20–09; 8:45 am]
Billing code 4410–19–M

Rules and Regulations

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

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 741, 748 and 749

RIN 3133–AD56

Credit Union Reporting

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its reporting procedures and record retention requirements to conform regulatory provisions to its new, Web-based reporting system. The rule incorporates into the regulation a statutory requirement on reporting changes in senior officials resulting from election or appointments and clarifies requirements on when a credit union files reports with NCUA online. The rule also provides alternative reporting methods for credit unions unable to submit online reports.

DATES: The rule is effective September 1, 2009.

FOR FURTHER INFORMATION CONTACT: Amber Gravius, Risk Management Officer, Office of Examination and Insurance, (703) 518–6360; or Moisette Green, Staff Attorney, the Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

Background

NCUA has replaced the software used to submit financial and other reports with an integrated, Web-based information management system. The online system makes reporting more efficient and cost effective, and enhances the accuracy of credit union data. The implementation of the new online system requires revisions to current reporting regulations.

The Federal Credit Union Act (Act) grants NCUA broad authority to require federally insured credit unions (FICUs), including corporate credit unions, to submit financial data and other information as required by the NCUA Board (Board). 12 U.S.C. 1761, 1766, 1781, and 1782. NCUA has implemented this authority in various regulatory provisions. NCUA requires FICUs to submit financial reports, reports of officials, and other reports. 12 CFR 704.1, 741.6, and 748.1. Section 741.6(a) prescribes the requirements for financial, statistical, and other reports and, currently, requires natural person credit unions to file a Financial and Statistical Report quarterly, also referred to as a Call Report and identified as NCUA Form 5300. The provisions in § 741.6 currently do not specify the form corporate credit unions use; corporate credit unions file Call Reports monthly using NCUA Form 5310. Further, FICUs must file a Report of Officials, NCUA Form 4501, with NCUA annually after the election of officials. 12 CFR 748.1(a). In addition to information about a credit union's main location and branches, hours of operation, and identity of and contact information for senior officials, NCUA Form 4501 also contains a certification of FICU compliance with the requirements of Part 748, which includes catastrophic act reporting, suspicious activity reporting, and security program and Bank Secrecy Act requirements. *Id.* The front page of the NCUA Form 4501 states the Report of Officials must be filed with the regional director no later than 10 days after the election of officials.

Appendix A to Part 749 sets out guidelines for record retention and identifies key operational records FICUs should retain permanently. 12 CFR Part 749, Appendix A, para. E.2. NCUA Form 5300 or its equivalent is currently identified as an example of these key operational records. *Id.* at para. E(2)(b).

In March 2009, NCUA proposed revisions to §§ 741.6 and 748.1, and Appendix A to Part 749 to clarify online reporting procedures and record retention requirements, conform regulatory provisions to the new online system, and incorporate into the regulation a statutory requirement on reporting changes in senior officials. 74 FR 13139 (March 26, 2009).

Online Reporting Process

NCUA is interested in increasing efficiency, reducing costs, enhancing accuracy of data, and providing a secure, single access portal where credit unions can submit, edit, and view data NCUA collects. The new information management tool allows FICUs to submit financial reports, information regarding officials, and other information to NCUA through a secure, Web-based system. Credit unions have access to the online system via the internet from NCUA's Web site at *http://www.ncua.gov.* For credit unions to use the online system, they must have a computer, Internet connectivity, Internet Explorer 6.0 or higher, and a valid e-mail address. All users of the online system must use a login and password to access the system, and credit union users only have access to their own credit union's confidential information. The public may obtain non-confidential information without a login or password.

To ensure information is protected, users identify themselves using an authentication process requiring a unique login and password. Authenticated users may only access the information they are authorized to view. Additionally, the transmission of sensitive information between credit unions and NCUA is encrypted using the industry-standard Secure Sockets Layer (SSL) technology to prevent others from intercepting and accessing confidential, credit union information.

NCUA will no longer issue software to submit data; the online system permits credit unions to submit data to NCUA from any computer. Additionally, the online system eliminates mailing and printing delays, missing information, and damaged software CDs. The online system provides real-time warnings throughout the input process to ensure data integrity. NCUA is currently implementing the new system for natural person credit unions and anticipates implementing it for corporate credit unions in 2010.

All credit union data will be submitted and viewed through the online Credit Union Profile and Call Report. The online profile includes information NCUA maintains about a credit union that infrequently changes, for example, the credit union address(es), phone number(s), list of officials, hours of operation, etc. It has

additional information such as disaster recovery information, and information systems and technology information. After profile data are entered, subsequent input is only required for additions, deletions, or changes to the data.

For efficiency and to make reporting less burdensome, credit unions may have multiple users to enhance the likelihood that profile information is accurate and updated when necessary and ensure the Call Report is submitted timely. Additionally, multiple users may access the system and complete different sections of the Call Report and profile simultaneously. Credit unions unable to use the online system will use a manual process to submit their information on a paper form.

Comments on the Proposal

NCUA received comments from one credit union and two trade associations. The credit union supported the proposed changes, but raised concerns about data security. It suggested using electronic tokens or other multi-factor authentication method in conjunction with strong passwords to ensure data submitted through the online system is not compromised. The credit union also recommended giving credit unions up to 12 months instead of 30 days to update the online Reports of Officials information.

This final rule does not address data security. Credit unions can be sure NCUA will maintain the online system in accordance with federal computer security standards for the management of automated information resources. *See* Office of Management and Budget Circular No. A–130. Additionally, NCUA will encrypt sensitive information during transmission using industry-standard Secure Sockets Layer (SSL) technology to prevent others from intercepting and accessing confidential, credit union information.

The Board believes 30 days is a reasonable time for FICUs to update changes to the information regarding their officials in the online profile. Under the Act, federal credit unions must file the names and addresses of senior management officials and volunteer officials with NCUA within 10 days after their election or appointment. 12 U.S.C. 1761(b). NCUA needs up-to-date credit union information for many reasons, for example, member complaint resolution, examination completion, and disaster and emergency preparedness. Accordingly, credit unions must ensure their profiles contain accurate information.

One trade association supported the proposed adoption of an internet-based reporting system, but requested NCUA conduct a comprehensive review of the content of the reports credit unions must submit to reduce the reporting burden. Another trade association supported the objective to increase efficiency and ease of reporting information to NCUA, but expressed concern about the training required for credit union staff to use the new online system. It urged NCUA to allow sufficient time for implementation of the new system and to permit credit unions to make necessary logistical changes and train staff.

The Board expects the online system will reduce the burden on credit unions and make reporting more efficient. NCUA reviewed the information it collects from credit unions during the development of the online system and has reduced the redundancy associated with the various reporting requirements. Information that had previously been reported in multiple forms or reports has been consolidated in the online profile.

To assist credit unions with the transition to the online system, NCUA will host training sessions, including Webcasts, workshops, and seminars, throughout summer 2009. Information regarding the training sessions will be posted in the Upcoming Events section of NCUA's Web site, *http://www.ncua.gov.* Additionally, frequently asked questions are answered on NCUA's Web site at *http://www.ncua.gov/DataServices/OnlineFAQ.pdf.*

The Final Rule

NCUA is adopting the amendments to Parts 741, 748, and 749 as proposed without change. Section 741.6 clarifies when FICUs must update their Credit Union Profiles and addresses corporate credit unions and the NCUA Form 5310. Additionally, the rule amends § 748.1 to clarify the compliance report filing requirements for FICUs using the online system and for FICUs filing reports manually. FICUs that cannot certify compliance online must certify compliance in writing on the new Credit Union Profile form, NCUA Form 4501A. Finally, the rule updates the record retention guidelines in Appendix A of Part 749 and includes the new Credit Union Profile form as a key operational record that should be retained permanently.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small entities. 5 U.S.C. 603(a). For purposes of this analysis, NCUA considers credit unions having under $10 million in assets as small entities. Interpretive Ruling and Policy Statement 03–2, 68 FR 31949 (May 29, 2003). As of March 31, 2009, out of 7,749 natural person, federally insured credit unions, 3,168 had less than $10 million in assets. NCUA estimates out of 28 corporate credit unions, one is a small entity. This rule directly affects all small FICUs. Therefore, NCUA has determined this rule will have an impact on a substantial number of small entities.

NCUA has determined, however, the economic impact on entities affected by the rule will not be significant. The rule will reduce the regulatory burden on FICUs that submit their financial reports, Credit Union Profile, and other information online. NCUA is also proposing alternate methods for FICUs without internet access to submit information. Additionally, NCUA's Office of Small Credit Union Initiatives has reviewed the rule and concluded it would have a moderate impact on small credit unions, but contained sufficient provisions to mitigate the impact and would result in greater efficiencies for all credit unions. Further, NCUA invited comment on the economic impact the rule would have in its proposal and requested suggestions on how to minimize it. 74 FR 13139, 13141 (March 26, 2009). The Board received no comments on this issue. Accordingly, NCUA certifies the rule would not have a significant economic impact on small entities.

Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA), NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. NCUA submitted the information collection requirements in this rule to OMB for review and approval under section 3507 of the PRA and § 1320.11 of OMB's implementing regulations. 5 CFR 1320.11. The proposed rule contained a discussion of the revised information collection. 74 FR 13139, 13141 (March 26, 2009). OMB approval is pending.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Information and Regulatory Affairs, an office within OMB, is reviewing this final rule for purposes of SBREFA, and a determination is pending.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The rule would not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 741

Credit unions, Reporting and recordkeeping requirements, Share insurance.

12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 749

Archives and records, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board, on July 16, 2009.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons stated above, NCUA amends 12 CFR parts 741, 748 and 749 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

■ 1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 2. Amend § 741.6 by removing paragraph (d) and revising paragraph (a) to read as follows:

§ 741.6 Financial and statistical and other reports.

(a) Upon written notice from the Board, Regional Director, or Director of the Office of Corporate Credit Unions, insured credit unions must file financial and other reports in accordance with the instructions in the notice. Credit unions with the capacity to do so must use NCUA's information management system to submit their data online. If a credit union is unable to use the information system, it must file written reports in accordance with the instructions.

(1) *Credit Union Profile.* Insured credit unions must submit to NCUA a Credit Union Profile, NCUA Form 4501 or its equivalent, within 10 days after an election or appointment of senior management or volunteer officials or within 30 days of any change of the information in the profile.

(2) *Financial and statistical report.* Natural person credit unions must file a Call Report with NCUA quarterly in accordance with the instructions in the NCUA Form 5300. Corporate credit unions must file a Corporate Credit Union Call Report with NCUA monthly in accordance with the instructions in the NCUA Form 5310. Credit unions must submit a corrected Call Report upon notification or the discovery of a need for correction.

* * * * *

PART 748—SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES, SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK SECRECY ACT COMPLIANCE

■ 3. The authority citation for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1786(q); 15 U.S.C. 6801 and 6805(b); 31 U.S.C. 5311 and 5318.

■ 4. Amend § 748.1 by revising paragraph (a) to read as follows:

§ 748.1 Filing of reports.

(a) The president or managing official of each federally-insured credit union must certify compliance with the requirements of this Part in its Credit Union Profile annually. Credit unions that cannot update their profile online must certify compliance in writing in accordance with the instructions on NCUA Form 4501 or its equivalent. The credit union president or managing official must sign and date the written certification.

* * * * *

PART 749—RECORDS PRESERVATION PROGRAM AND APENDICES—RECORD RETENTION GUIDELINES; CATASTROPHIC ACT PREPAREDNESS GUIDELINES

■ 5. The authority citation for part 749 continues to read as follows:

Authority: 12 U.S.C. 1766, 1783, and 1789; 15 U.S.C. 7001(d).

■ 6. Amend Appendix A to Part 749 by revising paragraph E.2.(b) to read as follows:

Appendix A to Part 749—Record Retention Guidelines

* * * * *

E. * * *

2. * * *

(b) One copy of each financial report, NCUA Form 5300 or 5310, or their equivalent, and the Credit Union Profile report, NCUA Form 4501, or its equivalent as submitted to NCUA at the end of each quarter.

* * * * *

[FR Doc. E9–17312 Filed 7–20–09; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0646; Directorate Identifier 2009–NM–055–AD; Amendment 39–15974; AD 2009–15–11]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model SN–601 (Corvette) Airplanes

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

ACTION: Final rule; request for comments.

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 the landing roll a Corvette aircraft inclined to the Left Hand (LH) side as a result of the uncoupling of the left main landing gear shock absorber upper and lower cylinders, leading the left wheel tire to rub against the left wing under surface and to deflate, and the left wing tip fuel tank to strike the runway surface.
>
> The investigation showed that this uncoupling resulted from the loosening of the shock absorber locking system nut and its associated lock washer.
>
> * * * * *

The unsafe condition is reduced structural integrity of the main landing gear, which could cause the wing tip fuel tank to strike the runway surface and potentially result in a fire. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective August 5, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 5, 2009.

We must receive comments on this AD by August 20, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0041, dated February 25, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During the landing roll a Corvette aircraft inclined to the Left Hand (LH) side as a result of the uncoupling of the left main landing gear shock absorber upper and lower cylinders, leading the left wheel tire to rub against the left wing under surface and to deflate, and the left wing tip fuel tank to strike the runway surface.
>
> The investigation showed that this uncoupling resulted from the loosening of the shock absorber locking system nut and its associated lock washer.
>
> This AD requires the inspection of the locking system of the main landing gear shock absorber and the accomplishment of the associated corrective actions.

The unsafe condition is reduced structural integrity of the main landing gear, which could cause the wing tip fuel tank to strike the runway surface and potentially result in a fire. Required actions include doing a general visual inspection to verify the proper position of the lock washer and the tightening torque of the nut of the shock absorber locking system on both the left-hand and right-hand main landing gear, and doing corrective actions including replacing the lock washer, installing the main landing gear shock absorber body, and installing the main landing gear shock absorber, as applicable. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Corvette Service Bulletin 32–19, dated January 9, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0646; Directorate Identifier 2009–NM–055–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–15–11 Aerospatiale: Amendment 39–15974. Docket No. FAA–2009–0646; Directorate Identifier 2009–NM–055–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 5, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Aerospatiale Model SN–601 (Corvette) airplanes, certificated in any category, all serial numbers.

Subject

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

Reason

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

During the landing roll a Corvette aircraft inclined to the Left Hand (LH) side as a result of the uncoupling of the left main landing gear shock absorber upper and lower cylinders, leading the left wheel tire to rub against the left wing under surface and to deflate, and the left wing tip fuel tank to strike the runway surface.

The investigation showed that this uncoupling resulted from the loosening of the shock absorber locking system nut and its associated lock washer.

This AD requires the inspection of the locking system of the main landing gear shock absorber and the accomplishment of the associated corrective actions.

The unsafe condition is reduced structural integrity of the main landing gear, which could cause the wing tip fuel tank to strike the runway surface and potentially result in a fire. Required actions include doing a general visual inspection to verify the proper position of the lock washer and the tightening torque of the nut of the shock absorber locking system on both the left-hand and right-hand main landing gear, and doing corrective actions including replacing the lock washer, installing the main landing gear shock absorber body, and installing the main landing gear shock absorber, as applicable.

Actions and Compliance

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

(1) Within 90 days after the effective date of this AD, do a general visual inspection to verify the proper position of the lock washer (located opposite the nut notch) and check the tightening torque of the nut of the shock absorber locking system on both the left-hand and right-hand main landing gear, in accordance with the Accomplishment Instructions of Airbus Corvette Service Bulletin 32–19, dated January 9, 2009.

(2) In case of findings of improper assembly during the inspection required in paragraph (f)(1) of this AD, before further flight, replace the lock washer, install the main landing gear shock absorber body, and install the main landing gear shock absorber, in accordance with the Accomplishment Instructions of Airbus Corvette Service Bulletin 32–19, dated January 9, 2009. Within 120 flight cycles but not before 100 flight cycles, repeat the inspection specified in paragraph (f)(1) of this AD.

(3) In case of no findings during the inspection required in paragraph (f)(1) of this AD, no further inspections are required.

(4) After the effective date of this AD, no person may install a main landing gear shock absorber on which the locking system (nut and lock washer) is not compliant with the approved configuration as identified by Airbus Corvette Service Bulletin 32–19, dated January 9, 2009.

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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. 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. The AMOC approval letter must specifically reference this AD.

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

(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 Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0041, dated February 25, 2009; and Airbus Corvette Service Bulletin 32–19, dated January 9, 2009; for related information.

Material Incorporated by Reference

(i) You must use Airbus Corvette Service Bulletin 32–19, dated January 9, 2009, to do the actions required by this AD, unless the AD specifies otherwise. (Only page 1 of this

document specifies the issue date of the document; no other page of this document contains this information.)

(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 ATR–GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; e-mail *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.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 July 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–16929 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0398; Directorate Identifier 2008–NM–193–AD; Amendment 39–15971; AD 2009–15–08

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ 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:

There have been a number of incidents where wing-to-fuselage or MLG [main landing gear] door fairing panels have detached from the aircraft during flight. Subsequent inspection revealed the loss of the fairing panels to be due to failure of certain steel grommets * * *. A detaching panel could strike the aircraft during flight, causing damage. In addition, a detaching panel could become attached to the structure or control surfaces, resulting in reduced control of the aircraft.

* * * * *

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

DATES: This AD becomes effective August 25, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 25, 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; 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 April 30, 2009 (74 FR 19905). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There have been a number of incidents where wing-to-fuselage or MLG [main landing gear] door fairing panels have detached from the aircraft during flight. Subsequent inspection revealed the loss of the fairing panels to be due to failure of certain steel grommets, (P/N) [part number] SL5183 and HC535H0312, through which the attachment bolts are inserted. These failures may have been caused by improper installation of the grommets or damage resulting from maintenance procedures relating to paint stripping and repainting, allowing air loads to pull the panel through the grommet. A detaching panel could strike the aircraft during flight, causing damage. In addition, a detaching panel could become attached to the structure or control surfaces, resulting in reduced control of the aircraft.

Following the application of BAE Systems (Operations) Ltd ISB 53–202 at Revision 1 to the first few, it has been discovered that removal of existing grommets P/N SL5183 and HC535H0312 may result in localised damage to the aluminum foil membrane attached to the inner surface of some fairing panels. BAE Systems (Operations) Ltd has therefore issued additional instructions in All Operators Message (AOM) 08–015V, including bonding checks and detailed procedures for applying an electro-conductive paste at each SL5185 grommet location in order to bridge any gap between grommet and the inner aluminum foil. The next revision of BAE Systems (Operations) Ltd ISB 53–202 will include the technical content of AOM 08–015V.

For the reasons described above, this EASA AD requires repetitive inspections of the wing-to-fuselage & MLG door fairing panel grommets and, when damage is detected, the accomplishment of corrective actions.

Corrective actions include replacing damaged grommets with new P/N SL5185 grommets; or doing a temporary repair, which defers the replacement. You may obtain further information by examining the MCAI in the AD docket.

Clarification for Unsatisfactory Bonding

Unsatisfactory bonding, as used in this AD, is defined as: Intermittent loss of, or failure of the bond/electrical connection.

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 1 product of U.S. registry. We also estimate that it will take about 14 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 $1,120.

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:

2009–15–08 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–15971. Docket No. FAA–2009–0398; Directorate Identifier 2008–NM–193–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 25, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes, certificated in any category; all models, all serial numbers, that have embodied modification HCM00633E or HCM00934A.

Subject

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

Reason

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

There have been a number of incidents where wing-to-fuselage or MLG [main landing gear] door fairing panels have detached from the aircraft during flight. Subsequent inspection revealed the loss of the fairing panels to be due to failure of certain steel grommets, (P/N) [part number] SL5183 and HC535H0312, through which the attachment bolts are inserted. These failures may have been caused by improper installation of the grommets or damage resulting from maintenance procedures relating to paint stripping and repainting, allowing air loads to pull the panel through the grommet. A detaching panel could strike the aircraft during flight, causing damage. In addition, a detaching panel could become attached to the structure or control surfaces, resulting in reduced control of the aircraft.

Following the application of BAE Systems (Operations) Ltd ISB 53–202 at Revision 1 to the first few, it has been discovered that removal of existing grommets P/N SL5183 and HC535H0312 may result in localised damage to the aluminum foil membrane attached to the inner surface of some fairing panels. BAE Systems (Operations) Ltd has therefore issued additional instructions in All Operators Message (AOM) 08–015V, including bonding checks and detailed procedures for applying an electro-conductive paste at each SL5185 grommet location in order to bridge any gap between grommet and the inner aluminum foil. The next revision of BAE Systems (Operations) Ltd ISB 53–202 will include the technical content of AOM 08–015V.

For the reasons described above, this EASA AD requires repetitive inspections of the wing-to-fuselage & MLG door fairing panel grommets and, when damage is detected, the accomplishment of corrective actions.

Corrective actions include replacing damaged grommets with new P/N SL5185 grommets; or doing a temporary repair, which defers the replacement.

Actions and Compliance

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

(1) Within 4,000 flight cycles or 24 months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 8,000 flight cycles, conduct a visual inspection of the steel grommets on the fairing panels in accordance with paragraph 2.C. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008.

(2) If damage is found during any inspection required by paragraph (f)(1) of this AD, before further flight, do the actions specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD.

(i) Replace the grommets with new P/N SL5185 grommets in accordance with paragraph 2.C. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008, and concurrently conduct a bonding inspection at each grommet location in accordance with paragraph 2.C. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008. If unsatisfactory bonding is detected, before further flight, apply electro-conductive paste in accordance with Appendix 4 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008.

Note 1: Unsatisfactory bonding, as used in this AD, is defined as: intermittent, loss of, or failure of the bond/electrical connection.

(ii) Do a temporary repair in accordance with Appendix 3 of the BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008, or an approved BAE Systems (Operations) Limited temporary repair scheme.

(3) For airplanes on which a temporary repair specified in paragraph (f)(2)(ii) of this AD has been done: Within 8,000 flight cycles after doing the temporary repair, replace any temporary repair grommets with new P/N SL5185 grommets in accordance with paragraph 2.C. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–

202, Revision 3, dated December 10, 2008, and concurrently conduct a bonding inspection at each grommet location in accordance with paragraph 2.C. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008. If unsatisfactory bonding is detected, before further flight, apply electro-conductive paste in accordance with Appendix 4 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008.

(4) For airplanes on which any new P/N SL5185 grommets have been installed without having a bonding inspection prior to the effective date of this AD: Before or during the next scheduled repetitive inspection in accordance with paragraph (f)(1) of this AD, conduct a bonding inspection in accordance with paragraph 2.C. of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008. If unsatisfactory bonding is detected, before further flight, apply electro-conductive paste in accordance with Appendix 4 of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008.

(5) Replacing all existing grommets with new P/N SL5185 grommets on all panels, including the corresponding bonding inspections and the application of the electro-conductive paste as applicable, in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008, terminates the repetitive inspections required by paragraph (f)(1) of this AD.

(6) Visual inspections, temporary repairs, and replacements of the grommets are also acceptable for compliance with the corresponding requirements of paragraphs (f)(1), (f)(2)(i), (f)(2)(ii), (f)(3), and (f)(5) of this AD if done before the effective date of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 1, dated June 4, 2008.

(7) Visual inspections, temporary repairs, replacements of the grommets, bonding inspections, and applications of conductive paste are also acceptable for compliance with the corresponding requirements of paragraphs (f)(1), (f)(2)(i), (f)(2)(ii), (f)(3), (f)(4), and (f)(5) of this AD if done before the effective date of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 2, dated October 24, 2008.

(8) Bonding inspections and applications of conductive paste are also acceptable for compliance with the corresponding requirement of paragraphs (f)(2)(i), (f)(3), (f)(4), and (f)(5) of this AD if done before the effective date of this AD in accordance with BAE Systems (Operations) Limited All Operator Message 08–015V, Issue 1, dated August 22, 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your 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 ensure 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 2008–0180, dated September 30, 2008; and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008; for related information.

Material Incorporated by Reference

(i) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–202, Revision 3, dated December 10, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com*; Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm*.

(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 July 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–16932 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1365; Directorate Identifier 2008–NM–076–AD; Amendment 39–15970; AD 2009–15–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 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:

In 2005 a lateral runway excursion occurred on an A320 aircraft. Such excursions are classified as hazardous, with a large reduction in safety margins. Investigation has shown that the aircraft landed with the nose wheels rotated nearly 20 degrees from center. During subsequent tests on the removed BSCU [Braking and Steering Control Unit], a BSCU hardware failure was found, affecting the monitoring function, including the system reconfiguration management, and leading to a runaway of [the] Nose Wheel Steering [uncommanded steering].

* * * * *

The unsafe condition is an uncommanded steering condition during takeoff or landing, which could result in departure of the airplane from the runway. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 25, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 25, 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 January 7, 2009 (74 FR 664). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> In 2005 a lateral runway excursion occurred on an A320 aircraft. Such excursions are classified as hazardous, with a large reduction in safety margins. Investigation has shown that the aircraft landed with the nose wheels rotated nearly 20 degrees from center. During subsequent tests on the removed BSCU [Braking and Steering Control Unit], a BSCU hardware failure was found, affecting the monitoring function, including the system reconfiguration management, and leading to a runaway of [the] Nose Wheel Steering [uncommanded steering].
>
> DGAC [Direction Générale de l'Aviation Civile] Airworthiness Directive (AD) F–1992–117–025(B), Revision 1 [which corresponds to FAA AD 94–24–07], mandated the BSCU upgrade in order to improve the steering logic, but this modification has shown not to be sufficient to address the identified failure mechanism.
>
> A software modification is now implemented in BSCU standard 10 which improves the system reconfiguration management when this failure mechanism is detected.
>
> BSCU standard 10 also includes other improvements—as detailed in the associated Service Bulletin.
>
> This AD therefore mandates the modification or replacement of the BSCU standard 7, 9 or 9.1, by the BSCU standard 10.

The unsafe condition is an uncommanded steering condition during takeoff or landing, which could result in departure of the airplane from the runway. The corrective action also includes replacement of certain DUNLOP tires that are not compatible with BSCU standard 10. 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 comments received.

Support for the AD

JetBlue Airways Corporation supports the actions specified in the NPRM.

Request To Relocate Certain Language

Airbus suggests that we relocate the following sentence in the Reason section: ''An uncommanded steering condition during takeoff or landing could result in departure of the airplane from the runway.'' Airbus states that relocating that sentence away from the previous sentence, which addresses replacing tires, would avoid misinterpretation by association.

We acknowledge the Airbus comment and we have relocated the subject sentence and clarified that it is the statement of the unsafe condition in both the Discussion and Reason sections of this AD.

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 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 591 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $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 $141,840, or $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:

2009–15–07 Airbus: Amendment 39–15970. Docket No. FAA–2008–1365; Directorate Identifier 2008–NM–076–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 25, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133; A320–111, –211, –212, –214, –231, –232, and –233; and A321–111, –112, –131, –211, –212, –213, –231, and –232 series airplanes; certificated in any category; equipped with one conventional pre-Enhanced Manufacture and Maintainability (pre-EMM) Braking and Steering Control Unit (BSCU), having the part numbers specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD.

(1) C20216332292C (standard 7) installed by Airbus Modification 24449 in production, or by Airbus Service Bulletin A320–32–1124 in service.

(2) C202163372D32 (standard 9) installed by Airbus Modification 31106 in production, or by Airbus Service Bulletin A320–32–1227 or A320–32–1232 in service.

(3) C202163382D32 (standard 9.1) installed by Airbus Modification 32500 in production, or by Airbus Service Bulletin A320–32–1254 in service.

Subject

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

Reason

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

In 2005 a lateral runway excursion occurred on an A320 aircraft. Such excursions are classified as hazardous, with a large reduction in safety margins. Investigation has shown that the aircraft landed with the nose wheels rotated nearly 20 degrees from center. During subsequent tests on the removed BSCU [Braking and Steering Control Unit], a BSCU hardware failure was found, affecting the monitoring function, including the system reconfiguration management, and leading to a runaway of [the] Nose Wheel Steering [uncommanded steering].

DGAC [Direction Générale de l'Aviation Civile] Airworthiness Directive (AD) F–1992–117–025(B), Revision 1 [which corresponds to FAA AD 94–24–07], mandated the BSCU upgrade in order to improve the steering logic, but this modification has shown not to be sufficient to address the identified failure mechanism.

A software modification is now implemented in BSCU standard 10 which improves the system reconfiguration management when this failure mechanism is detected.

BSCU standard 10 also includes other improvements—as detailed in the associated Service Bulletin.

This AD therefore mandates the modification or replacement of the BSCU standard 7, 9 or 9.1, by the BSCU standard 10.

The unsafe condition is an uncommanded steering condition during takeoff or landing, which could result in departure of the airplane from the runway. The corrective action also includes replacement of certain DUNLOP tires that are not compatible with BSCU standard 10.

Actions and Compliance

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

(1) Within 18 months after the effective date of this AD: Modify or replace the BSCU in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A320–32–1336, Revision 01, dated January 10, 2008; and inspect the airplane to determine if DUNLOP tires 46x16–20 having part number (P/N) 11659 T or 11661 T are installed. If those tires are installed, before further flight, replace with acceptable tires using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). Accomplishment of the applicable requirements in this paragraph terminates the requirements of AD 94–24–07, amendment 39–9080.

(2) Previous accomplishment of the modification or replacement of the BSCU before the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A320–32–1336, dated September 19, 2007, 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: Although the MCAI and service information do not provide procedures for replacing the tires as specified in paragraph (f)(1) of this AD, this AD requires that you replace the tires using a method approved by either the Manager, International Branch, ANM–116, FAA, or the EASA (or its delegated agent).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, 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 EASA Airworthiness Directive 2008–0048, dated February 28, 2008; and Airbus Mandatory Service Bulletin A320–32–1336, Revision 01, dated January 10, 2008; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A320–32–1336, Revision 01, dated January 10, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, 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 July 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–16937 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1201; Directorate Identifier 2008–NM–007–AD; Amendment 39–15922; AD 2009–11–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A310 series airplanes. That AD currently requires repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; repetitive inspections for fatigue cracking of frame 39, stringer 35; and corrective actions if necessary. The existing AD also provides for an optional terminating action for certain repetitive inspections, except for certain areas where corrosion was detected and reworked. This new AD reduces the intervals for accomplishing repetitive inspections in a certain area. This AD results from mandatory continuing airworthiness information originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to detect and correct fatigue cracks and corrosion around and under the chafing plates of the wing root, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective August 25, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 25, 2009.

The Director of the Federal Register previously approved the incorporation by reference of Airbus Service Bulletin A310–53–2070, dated October 3, 1994, on June 3, 1998 (63 FR 23377, April 29, 1998).

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

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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2004–14–06, amendment 39–13715 (69 FR 41401, July 9, 2004). The existing AD applies to certain Airbus Model A310 series airplanes. That NPRM was published in the **Federal Register** on November 13, 2008 (73 FR 67110). That NPRM proposed to continue to require repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; repetitive inspections for fatigue cracking of frame 39, stringer 35; and corrective actions if necessary. That NPRM also proposed to continue to provide for an optional terminating action for certain repetitive inspections, except for certain areas where corrosion was detected and reworked. In addition, that NPRM proposed to reduce the intervals for accomplishing the repetitive inspections in a certain area.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been received on the NPRM. FedEx supports the NPRM.

Revisions to Paragraphs (f), (h), (i), and (j) of This AD

We have revised paragraph (h) of this AD to give credit for actions done in accordance with Airbus Service Bulletin A310–53–2070, Revision 1, dated September 23, 1996. We also added Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007, as an acceptable source of service information for compliance with the requirements of paragraphs (f) and (i) of this AD. We have also revised paragraph (j) of this AD to include a new Table 1 to specify the number, revision, and date of each service bulletin for which no reporting is required.

Conclusion

We reviewed the relevant data, considered the comment 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

This AD affects about 69 Model A310 series airplanes of U.S. registry. The actions that are required by AD 2004–14–06 and retained in this AD take about 68 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions is $375,360, or $5,440 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

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 39–13715 (69 FR 41401, July 9, 2004) and by adding the following new airworthiness directive (AD):

2009–11–12 Airbus: Amendment 39–15922. Docket No. FAA–2008–1201; Directorate Identifier 2008–NM–007–AD.

Effective Date

(a) This AD becomes effective August 25, 2009.

Affected ADs

(b) This AD supersedes AD 2004–14–06.

Applicability

(c) This AD applies to Airbus Model A310 series airplanes, certificated in any category, on which Airbus Modifications 8888 and 8889 have not been accomplished.

Unsafe Condition

(d) This AD results from mandatory continuing airworthiness information originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to detect and correct fatigue cracks and corrosion around and under the chafing plates of the wing root, which could result in 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.

Requirements of AD 2004–14–06

Repetitive Inspections and Corrective Actions

(f) Except as provided by paragraphs (g), (k), and (l) of this AD: Within 4 years since date of manufacture, or within 12 months after June 3, 1998 (the effective date of AD 98–09–20, amendment 39–10501), whichever occurs later, perform an inspection to detect discrepancies around and under the chafing plates of the wing root, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007; Revision 05, dated November 12, 2002; Revision 04, dated November 8, 2000; Revision 03, dated October 28, 1997; Revision 2, dated September 23, 1996; or Revision 1, dated September 19, 1995. If any discrepancy is found, prior to further flight, accomplish follow-on corrective actions (i.e., removal of corrosion, corrosion protection, high frequency eddy current inspection, x-ray inspection), as applicable, in accordance with the applicable service bulletin. Repeat the inspections thereafter at the intervals specified in the applicable service bulletin. After August 13, 2004 (the effective date of AD 2004–14–06), repeat the inspections thereafter at the intervals specified in Airbus Service Bulletin A310–53–2069, Revision 04, dated November 8, 2000; Airbus Service Bulletin A310–53–2069, Revision 05, dated November 12, 2002; or Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007.

(g) If any discrepancy is found during any inspection required by paragraph (f) of this AD, and Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007; Revision 05, dated November 12, 2002; Revision 04, dated November 8, 2000; Revision 03, dated October 28, 1997; Revision 2, dated September 23, 1996; or Revision 1, dated September 19, 1995; as applicable; specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Where differences in the compliance times or corrective actions exist between the service bulletin and this AD, the AD prevails.

Optional Terminating Action

(h) Except as provided by paragraph (i) of this AD: Accomplishment of the replacement of the stainless steel chafing plates with new chafing plates made of aluminum alloy, in accordance with Airbus Service Bulletin A310–53–2070, Revision 02, dated November 8, 2000; or the original issue, dated October 3, 1994; constitutes terminating action for the repetitive inspections required by paragraph (f) of this AD. Actions done in accordance with Airbus Service Bulletin A310–53–2070, Revision 1, dated September 23, 1996, are acceptable for compliance with actions required by this AD.

Continuation of Repetitive Inspections

(i) Except as provided by paragraphs (k) and (l) of this AD: Within 30 days after August 13, 2004, do a review of the airplane maintenance records to determine if any corrosion was detected and reworked on the left and/or right side of frame 39, stringer 35, during the accomplishment of any corrective action or repair specified in paragraphs (f) or (g) of this AD. If any corrective action or repair has been accomplished in this area, perform an inspection for fatigue cracking of frame 39, stringer 35, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007; Revision 05, dated November 12, 2002; or Revision 04, dated November 8, 2000. Do the initial inspection at the threshold specified in Figure 1 of the service bulletin, or within 30 days after August 13, 2004, whichever is later. Repeat the inspection thereafter at the intervals specified in Figure 1 of the service bulletin. If any discrepancy is found, prior to further flight, accomplish the applicable follow-on corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007; Revision 05, dated November 12, 2002; or Revision 04, dated November 8, 2000.

Submission of Information Not Required

(j) Although the service bulletins specified in Table 1 of this AD specify to submit information to the manufacturer, this AD does not include such a requirement.

TABLE 1—NO REPORTING REQUIREMENT FOR THESE SERVICE BULLETINS

Airbus Service Bulletin—	Revision—	Dated—
A310–53–2069	1	September 19, 1995.
A310–53–2069	2	September 23, 1996.
A310–53–2069	03	October 28, 1997.
A310–53–2069	04	November 8, 2000.
A310–53–2069	05	November 12, 2002.

TABLE 1—NO REPORTING REQUIREMENT FOR THESE SERVICE BULLETINS—Continued

Airbus Service Bulletin—	Revision—	Dated—
A310–53–2069	06	May 22, 2007.
A310–53–2070	Original	October 3, 1994.
A310–53–2070	1	September 23, 1996.
A310–53–2070	02	November 8, 2000.

New Actions Required by This AD

New Service Bulletin Revision

(k) As of the effective date of this AD, use only the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007, to do the inspections and corrective actions required by paragraphs (f) and (i) of this AD.

Repetitive Inspections at Frame 39, Stringer 35 at Reduced Intervals

(l) As of the effective date of this AD, if any corrosion is found at frame 39, stringer 35, during any inspection required by this AD, do the repetitive inspections required by paragraphs (f) and (i) of this AD, as applicable, at the earlier of the times specified in paragraphs (l)(1) and (l)(2) of this AD. Repeat the inspections thereafter at intervals specified in Figure 1, Sheets 4 and 5, of Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007, except as provided by paragraph (m) of this AD.

(1) At the next specified repeat interval specified in paragraph (f) of this AD.

(2) At the later of the times specified in paragraphs (l)(2)(i) and (l)(2)(ii) of this AD, except as provided by paragraph (m) of this AD.

(i) At the applicable threshold specified in Figure 1, Sheets 4 and 5, of Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007.

(ii) Within 900 flight cycles or 1,800 flight hours after the effective date of this AD, whichever occurs first.

(m) Where Figure 1, Sheets 4 and 5, of Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007, specifies to contact Airbus, do the inspections at threshold and repeat intervals approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Alternative Methods of Compliance (AMOCs)

(n) 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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.

Related Information

(o) European Aviation Safety Agency (EASA) Airworthiness Directive 2007–0292, dated November 27, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(p) You must use Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007, as applicable, to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional terminating action specified in this AD, you must use the service bulletins specified in Table 2 of this AD, as applicable, unless the AD specifies otherwise.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE FOR OPTIONAL ACTIONS SPECIFIED IN THIS AD

Airbus Service Bulletin—	Revision—	Dated—
A310–53–2070	02	November 8, 2000.
A310–53–2070	Original	October 3, 1994.

Airbus Service Bulletin A310–53–2070, Revision 02, dated November 8, 2000, contains the following effective pages:

Page No.	Revision level shown on page	Date shown on page
1–13, 15–16, 21–22	02	November 8, 2000.
14, 17–18	1	September 23, 1996.
19–20	Original	October 3, 1994.

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

TABLE 3—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin—	Revision—	Dated—
A310–53–2069	06	May 22, 2007.
A310–53–2070	02	November 8, 2000.

(2) The Director of the Federal Register previously approved the incorporation by reference of Airbus Service Bulletin A310–53–2070, dated October 3, 1994, on June 3, 1998 (63 FR 23377, April 29, 1998).

(3) For service information identified in this AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice

Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 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 July 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–17122 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0644; Directorate Identifier 2009–NM–059–AD; Amendment 39–15972; AD 2009–15–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A380–841, –842, and –861 Airplanes

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

ACTION: Final rule; request for comments.

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 inspections in production and on in-service aircraft, a number of Overheat Detection System (OHDS) installation non-conformities have been identified along the bleed air ducting.

Some installation issues which may lead to a degraded leak detection capability have been reported. In case of hot air leakage, the potential degradation of the OHDS would not allow preventing damages to structure or components * * *.

* * * * *

Nonconforming installation or a failure of the OHDS could allow undetected leakage of bleed air from the hot engine/auxiliary power unit causing damage to the airplane structure and various airplane components and systems. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective August 5, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication, listed in the AD as of August 5, 2009.

We must receive comments on this AD by August 20, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0066, dated March 19, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During inspections in production and on in-service aircraft, a number of Overheat Detection System (OHDS) installation non-conformities have been identified along the bleed air ducting.

Some installation issues which may lead to a degraded leak detection capability have been reported. In case of hot air leakage, the potential degradation of the OHDS would not allow preventing damages to structure or components, and therefore could lead to an unsafe condition.

To ensure that in-service aircraft are free of such non-conformities, this AD requires an inspection of the OHDS installation along the bleed air ducting and, in case of findings [any sensing element or insulation muff installed incorrectly], to bring back the installation into the compliant configuration.

Nonconforming installation or a failure of the OHDS could allow undetected leakage of bleed air from the hot engine/auxiliary power unit causing damage to the airplane structure and various airplane components and systems. The inspection of the OHDS installation, for certain airplanes, consists of inspecting the APU overheat sensing elements APU 1 Loop A and B, the APU overheat sensing elements APU 2 Loop A and B, the crossbleed overheat sensing element, the forward cargo compartment heating element, and the sensing element of the overheat detection unit of the wing. For certain other airplanes, inspecting the OHDS installation consists of inspecting the forward cargo compartment heating element. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A380–36–8004, dated February 13, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these

products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0644; Directorate Identifier 2009–NM–059–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–15–09 Airbus: Amendment 39–15972. Docket No. FAA–2009–0644; Directorate Identifier 2009–NM–059–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 5, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A380–841, –842, and –861 airplanes, certificated in any category, serial numbers 3, 5, 6, 8, 10, 11, 12, 13, 14, 15, 16, 20, and 22.

Subject

(d) Air Transport Association (ATA) of America Code 36: Pneumatic.

Reason

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

During inspections in production and on in-service aircraft, a number of Overheat Detection System (OHDS) installation non-conformities have been identified along the bleed air ducting.

Some installation issues which may lead to a degraded leak detection capability have been reported. In case of hot air leakage, the potential degradation of the OHDS would not allow preventing damages to structure or components, and therefore could lead to an unsafe condition.

To ensure that in-service aircraft are free of such non-conformities, this AD requires an inspection of the OHDS installation along the bleed air ducting and, in case of findings [any sensing element or insulation muff installed incorrectly], to bring back the installation into the compliant configuration.

Nonconforming installation or a failure of the OHDS could allow undetected leakage of bleed air from the hot engine/auxiliary power unit causing damage to the airplane structure and various airplane components and systems. The inspection of the OHDS installation, for certain airplanes, consists of inspecting the APU overheat sensing elements APU 1 Loop A and B, the APU overheat sensing elements APU 2 Loop A and B, the crossbleed overheat sensing element, the forward cargo compartment heating element, and the sensing element of the overheat detection unit of the wing. For certain other airplanes, inspecting the OHDS installation consists of inspecting the forward cargo compartment heating element.

Actions and Compliance

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

(1) Within 90 days after the effective date of this AD, do a one-time detailed visual inspection to determine whether the OHDS sensing elements and insulation muffs have been correctly installed, in accordance with Airbus Service Bulletin A380–36–8004, dated February 13, 2009.

(2) If, during any inspection required by paragraph (f)(1) of this AD, any sensing element or insulation muff is found to have been installed incorrectly, before further flight, bring the installation into compliant configuration, in accordance with Airbus Service Bulletin A380–36–8004, dated February 13, 2009.

(3) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (f)(1) of this AD to Airbus, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France, as specified in Figures A–GBCAA and A–GBDAA of Airbus Service Bulletin A380–36–8004, dated February 13,

2009, at the applicable time specified in paragraph (f)(3)(i) or (f)(3)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(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 Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0066, dated March 19, 2009; and Airbus Service Bulletin A380–36–8004, dated February 13, 2009; for related information.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A380–36–8004, dated February 13, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—EANA (Airworthiness Office); 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 562 110 253; Fax +33 562 110 307; e-mail *account.airworth-A380@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 July 6, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–16763 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1311; Directorate Identifier 2007–NE–48–AD; Amendment 39–15976; AD 2009–15–13]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc., T5313 and T5317 Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Honeywell International Inc., T5313 and T5317 series turboshaft engines. This AD requires initial and repetitive visual inspections and initial and repetitive ultrasonic inspections of combustion chamber housings (CCHs) for cracks. This AD results from eight instances of cracks in CCHs. Two of the instances resulted in an engine shutdown during flight. We are issuing this AD to detect cracks in the CCH, which could result in rupture of the CCH, leading to loss of engine power and damage to the helicopter.

DATES: This AD becomes effective August 25, 2009. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 25, 2009.

ADDRESSES: You can get the service information identified in this AD from Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181, U.S.A.; telephone (800) 601–3099 (U.S.A.) or (602) 365–3099 (International), Web site: *http://portal.honeywell.com/wps/portal/aero.*

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; e-mail: *robert.baitoo@faa.gov*; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to Honeywell International Inc., T5313 and T5317 series turboshaft engines. We published the proposed AD in the **Federal Register** on December 16, 2008 (73 FR 76291). That action proposed to require initial and repetitive visual inspections and initial and repetitive ultrasonic inspections of CCHs for cracks.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Change to Optional Terminating Action Paragraph

We changed optional terminating action paragraph (k) to state that installation of a CCH P/N 1–130–610–19 or 1–130–610R16 terminates the inspection requirements of this AD. These CCHs eliminate the failure mode that cause cracking.

Incorporation by Reference of Service Bulletin Appendix

Since we issued the proposed AD, we realized that we need to add the incorporation by reference of the Appendix of Honeywell International Inc. Service Bulletin No. T53–0144, Revision 4, dated March 31, 2008 for operators to perform the ultrasonic inspections. We added that reference to inspection paragraphs (i) and (j) 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.

Costs of Compliance

We estimate that this AD will affect 100 engines installed on helicopters of U.S. registry. We also estimate that it will take about 3 work-hours per engine to perform the actions, and that the average labor rate is $80 per work-hour. No parts are required. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $24,000.

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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–15–13 Honeywell International Inc. (Formerly AlliedSignal and Textron-Lycoming): Amendment 39–15976. Docket No. FAA–2008–1311; Directorate Identifier 2007–NE–48–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 25, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International Inc. T5313B, T5317A, T5317A–1, T5317B, and T5317BCV turboshaft engines with combustion chamber housing (CCH), part numbers (P/Ns) 1–130–610–05, 1–130–610–12, and 1–130–610–17, installed. These engines are installed on, but not limited to, Bell 205 and 210 Series and Kaman K–1200 helicopters.

Unsafe Condition

(d) This AD results from eight instances of cracks in CCHs. Two of the instances resulted in an engine shutdown during flight. We are issuing this AD to detect cracks in the CCH, which could result in rupture of the CCH, leading to loss of engine power and damage to the helicopter.

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.

Initial Visual Inspection

(f) For CCH, P/N 1–130–610–05 and 1–130–610–12, within 50 hours time-in-service (TIS) after the effective date of this AD, inspect the area between points A and B around the entire housing circumference in Figure 1 of this AD for weld repairs and cracks.

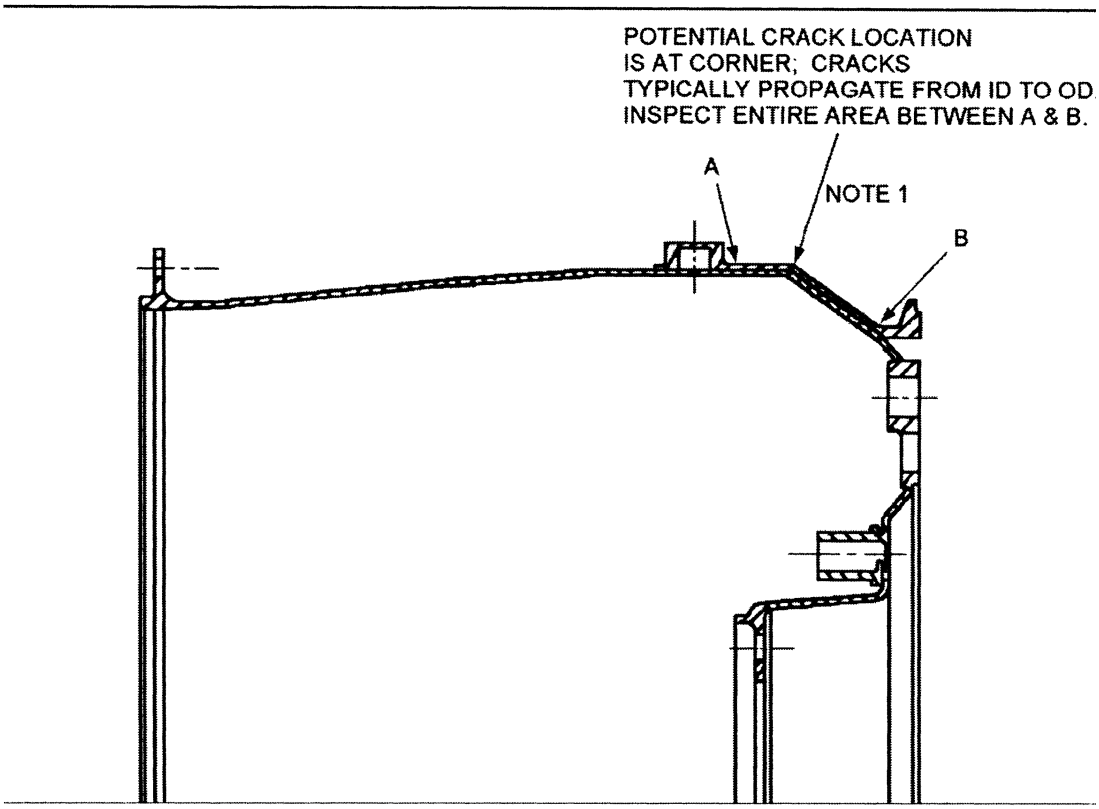
(1) If you find any cracks, replace the CCH before further flight. Honeywell International Inc. Alert Service Bulletin (ASB) T53–A0142, Revision 1, dated September 14, 2006, contains additional guidance on replacing the CCH.

(2) If you find any weld repairs, replace the CCH within 100 hours TIS after the visual inspection. Honeywell International Inc. ASB T53–A0142, Revision 1, dated September 14, 2006, contains additional guidance on replacing the CCH.

Repetitive Visual Inspections

(g) For CCH, P/N 1–130–610–05 and 1–130–610–12, inspect the area between points A and B around the entire housing circumference in Figure 1 of this AD for cracks within every 50 hours time-since-last inspection. Honeywell International Inc. Standard Practices Manual 70–20–02, SP 1302, contains additional guidance on visual inspection.

(h) If you find any cracks, replace the CCH before further flight. Honeywell International Inc. ASB T53–A0142, Revision 1, dated September 14, 2006, contains additional guidance on replacing the CCH.



NOTE 1. NO WELD REPAIRS ALLOWED IN THIS AREA.

Figure 1. Visual Inspection of CCH

Initial Ultrasonic Inspection

(i) Perform an ultrasonic inspection on the CCH. Use Honeywell International Inc. Service Bulletin (SB) No. T53–0144, Revision 4, dated March 31, 2008, section 3. Accomplishment Instructions and the SB Appendix to perform the ultrasonic inspection at the following compliance times.

(1) For CCH, P/N 1–130–610–05 and 1–130–610–12, within 500 hours TIS or next hot section inspection, whichever occurs first after the effective date of this AD, but not to exceed 6 months after the effective date of this AD.

(2) For CCH, P/N 1–130–610–17, perform at the first overhaul, but do not exceed 5,000 hours or 11,000 cycles, after the effective date of this AD, whichever occurs first.

Repetitive Ultrasonic Inspections

(j) Repeat the ultrasonic inspection on the CCH using Honeywell International Inc. SB No. T53–0144, Revision 4, dated March 31, 2008, section 3. Accomplishment Instructions and the SB Appendix at the following compliance times:

(1) Within every 1,200 flights, defined as the cumulative number of landings, since the last inspection; or

(2) Within every 200 flights, if the last inspection had ultrasonic findings as defined in paragraph 3.A.(2) or paragraph 3.A.(3) of Honeywell International Inc. SB No. T53–0144, Revision 4, dated March 31, 2008.

Optional Terminating Action

(k) Installation of a CCH P/N 1–130–610–19 or 1–130–610R16, or an FAA approved equivalent part, terminates the inspection requirements of this AD.

Alternative Methods of Compliance

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

Related Information

(m) Honeywell International Inc. ASB T53–A0142, Revision 1, dated September 14, 2006, and Standard Practices Manual 70–20–02, SP 1302, pertain to the subject of this AD. Contact Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181; telephone (800) 601–3099, Web site: *http://portal.honeywell.com/wps/portal/aero*, for a copy of this service information.

(n) Contact Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; e-mail: *robert.baitoo@faa.gov*; telephone (562) 627–5245; fax (562) 627–5210, for more information about this AD.

Material Incorporated by Reference

(o) You must use the service information specified in the following Table 1 to perform the ultrasonic inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in the following Table 1 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181; telephone (800) 601–3099, Web site: *http://portal.honeywell.com/wps/portal/aero*, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

TABLE 1—INCORPORATION BY REFERENCE

Honeywell International Inc. Service Bulletin No.	Page	Revision	Date
T53–0144, Total Pages: 10	ALL	4	March 31, 2008.
T53–0144, Appendix, Total Pages: 13	ALL	C	January 25, 2008.

Issued in Burlington, Massachusetts, on July 14, 2009.

Peter A. White,

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

[FR Doc. E9–17146 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0645; Directorate Identifier 2009–NM–034–AD; Amendment 39–15973; AD 2009–15–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–301, –321, –322, –341, and –342 Series Airplanes, and Airbus Model A340–211, –212, –213, –311, –312, and –313 Series Airplanes

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

ACTION: Final rule; request for comments.

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 accomplishment of A330–300 Airworthiness Limitation Item (ALI) task 57.11.04–01–02 of a fastener hole between stringer 38 and 39 at FR40 rear fitting web, a crack was found on an adjacent hole at vertical post Y1959 lower attachment on both sides.

Other crack findings on this adjacent hole have been reported on A330–300 and A340–200/–300 aircraft as a result of sampling inspections.

If not corrected, crack propagation could result in loss of the fuselage structural integrity.

* * * * *

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective August 5, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 5, 2009.

We must receive comments on this AD by August 20, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0001, dated January 8, 2009 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During accomplishment of A330–300 Airworthiness Limitation Item (ALI) task 57.11.04–01–02 of a fastener hole between stringer 38 and 39 at FR40 rear fitting web, a crack was found on an adjacent hole at vertical post Y1959 lower attachment on both sides.

Other crack findings on this adjacent hole have been reported on A330–300 and A340–200/–300 aircraft as a result of sampling inspections.

If not corrected, crack propagation could result in loss of the fuselage structural integrity.

In order to fulfil[l] the certification requirements and following a fatigue analysis based on reported findings, a repetitive High Frequency Eddy Current (HFEC) Rototest inspection on the affected adjacent holes on both left hand (LH) and right hand (RH) sides between stringer 38 and 39 at FR40 rear fitting web is required by this AD and, in case of crack finding, the associated corrective actions have to be applied.

The associated corrective actions are oversizing the holes and performing an additional rototest inspection for cracking. If the cracking is within certain limits, the corrective action is to install oversize fasteners. If the cracking exceeds certain limits defined in the service bulletin, the corrective action is contacting Airbus for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A330–57–3107, including Appendices 01 and 02, dated October 7, 2008; and Mandatory Service Bulletin A340–57–4117, including Appendices 01 and 02, dated October 7, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0645; Directorate Identifier 2009–NM–034–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–15–10 Airbus: Amendment 39–15973. Docket No. FAA–2009–0645; Directorate Identifier 2009–NM–034–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 5, 2009.

Affected ADs

(b) None.

Applicability

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

(1) Airbus Model A330–301, –321, –322, –341, and –342 series airplanes, all serial numbers, except those on which Airbus Modification 44360 has been embodied in production.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 series airplanes, all serial numbers, except those on which Airbus Modification 44360 has been embodied in production.

Subject

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

Reason

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

During accomplishment of A330–300 Airworthiness Limitation Item (ALI) task 57.11.04–01–02 of a fastener hole between stringer 38 and 39 at FR40 rear fitting web, a crack was found on an adjacent hole at vertical post Y1959 lower attachment on both sides.

Other crack findings on this adjacent hole have been reported on A330–300 and A340–200/–300 aircraft as a result of sampling inspections.

If not corrected, crack propagation could result in loss of the fuselage structural integrity.

In order to fulfil[l] the certification requirements and following a fatigue analysis based on reported findings, a repetitive High Frequency Eddy Current (HFEC) Rototest inspection on the affected adjacent holes on both left hand (LH) and right hand (RH) sides between stringer 38 and 39 at (frame) FR40 rear fitting web is required by this AD and, in case of crack finding, the associated corrective actions have to be applied.

* * * * *

The associated corrective actions are oversizing the holes and performing an additional rototest inspection for cracking. If the cracking is within certain limits, the corrective action is to install oversize fasteners. If the cracking exceeds certain limits defined in the service bulletin, the corrective action is contacting Airbus for repair instructions and doing the repair.

Actions and Compliance

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

(1) Within the applicable time as specified in Table 1 of this AD, or within 90 days after the effective date of this AD, whichever occurs later: Perform a HFEC inspection by rototest for cracking of two holes on the left and right sides of the fuselage structure FR40 rear fitting, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–57–3107,

dated October 7, 2008; or Airbus Mandatory Service Bulletin A340–57–4117, dated October 7, 2008; as applicable. Do the associated corrective actions, before further flight, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–57–3107, dated October 7, 2008; or Airbus Mandatory Service Bulletin A340–57–4117, dated October 7, 2008; as applicable.

TABLE 1—COMPLIANCE TIMES

Model	Threshold from the first flight (whichever occurs first)
A330–300 series airplanes	17,700 total flight cycles or 53,100 total flight hours.
A340–200 series airplanes with modification 41652S11888	11,900 total flight cycles or 80,700 total flight hours.
A340–300 series airplanes with modification 41652S11888	11,900 total flight cycles or 80,700 total flight hours.
A340–200 series airplanes without modification 41652S11888	14,500 total flight cycles or 98,200 total flight hours.
A340–300 series airplanes without modification 41652S11888	12,700 total flight cycles or 85,900 total flight hours.

(2) Repeat the inspection required by paragraph (f)(1) of this AD within the applicable intervals as specified in Table 2 of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–57–3107, dated October 7, 2008; or Airbus Mandatory Service Bulletin A340–57–4117, dated October 7, 2008; as applicable.

TABLE 2—REPETITIVE INSPECTION INTERVALS

Model	Intervals (not to exceed)
A330–300 series airplanes	12,800 flight cycles or 38,500 flight hours, whichever occurs first.
A340–200 series airplanes with modification 41652S11888	8,600 flight cycles or 58,500 flight hours, whichever occurs first.
A340–300 series airplanes with modification 41652S11888	8,600 flight cycles or 58,500 flight hours, whichever occurs first.
A340–200 series airplanes without modification 41652S11888	10,500 flight cycles or 71,200 flight hours, whichever occurs first.
A340–300 series airplanes without modification 41652S11888	9,200 flight cycles or 62,300 flight hours, whichever occurs first.

(3) Where Airbus Mandatory Service Bulletin A330–57–3107, dated October 7, 2008; and Airbus Mandatory Service Bulletin A340–57–4117, dated October 7, 2008; recommend contacting Airbus for appropriate action: Before further flight, contact Airbus for repair instructions and do the repair.

(4) Accomplishment of the inspections required by paragraph (f)(1) of this AD before the effective date of this AD in accordance with the instructions of Airbus Technical Disposition LR5710D07014394, Issue B, dated September 24, 2008, is acceptable for compliance with the requirements of paragraph (f)(1) of this AD. However, inspections must be repeated thereafter in accordance with the requirements of paragraph (f)(2) 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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. The AMOC approval letter must specifically reference this AD.

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

(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 2009–0001, dated January 8, 2009; Airbus Mandatory Service Bulletin A330–57–3107, dated October 7, 2008; and Airbus Mandatory Service Bulletin A340–57–4117, dated October 7, 2008; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A330–57–3107, including Appendices 01 and 02, dated October 7, 2008; or Airbus Mandatory Service Bulletin A340–57–4117, including Appendices 01 and 02, dated October 7, 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 Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@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 July 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–16924 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0645; Directorate Identifier 2007–NM–358–AD; Amendment 39–15969; AD 2009–15–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707 Airplanes and Model 720 and 720B Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 707 airplanes and Model 720 and 720B series airplanes. This AD requires performing an operational test of the engine fuel suction feed of the fuel system, and other related testing and corrective actions if necessary. This AD results from a report of in-service occurrences of loss of fuel system suction feed capability, followed by total loss of pressure of the fuel feed system. We are issuing this AD to detect and correct failure of the engine fuel suction feed capability of the fuel system, which could result in multi-engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

DATES: This AD becomes effective August 25, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 25, 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: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6438; 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 all Boeing Model 707 airplanes and Model 720 and 720B series airplanes. That supplemental NPRM was published in the **Federal Register** on December 10, 2008 (73 FR 75007). That supplemental NPRM proposed to require performing an operational test of the engine fuel suction feed of the fuel system, and other related testing and corrective actions if necessary.

Explanation of Revised Service Information

Boeing has published Revision 1 of Boeing 707 Service Bulletin A3527, dated August 6, 2008. In the supplemental NPRM, we referred to the original issue of Boeing Alert 707 Service Bulletin A3527, dated November 7, 2007, as the appropriate source of service information for accomplishing the proposed actions. The procedures in Revision 1 of this service bulletin are essentially the same as those in the original issue of this service bulletin. Revision 1 of this service bulletin clarifies certain work instructions and specifies that no further work is necessary for airplanes on which the actions in the original issue were performed. Therefore, we have revised this AD to refer to Revision 1 of this service bulletin as the appropriate source of service information. We have also added a new paragraph (g) to this AD that specifies that actions done before the effective date of this AD in accordance with the original issue of this service bulletin are acceptable for compliance with the requirements of this AD.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received. Boeing concurs with the content of the supplemental NPRM.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 21 airplanes of U.S. registry. We also estimate that it takes 1 work-hour per product, per test, 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 $1,680, or $80 per product, per test.

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):

2009–15–06 Boeing: Amendment 39–15969. Docket No. FAA–2008–0645; Directorate Identifier 2007–NM–358–AD.

Effective Date

(a) This AD becomes effective August 25, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report of in-service occurrences of loss of fuel system suction feed capability, followed by total loss of pressure of the fuel feed system. We are issuing this AD to detect and correct failure of the engine fuel suction feed of the fuel system, which could result in multi-engine flameout, inability to restart the engines, and consequent forced landing of the airplane.

Compliance

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

Operational Test/Other Specified and Corrective Actions

(f) Within 18 months after the effective date of this AD: Perform an operational test of the engine fuel suction feed of the fuel system, and perform all other related testing and corrective actions, as applicable, before further flight, in accordance with the Accomplishment Instructions of Boeing 707 Service Bulletin A3527, Revision 1, dated August 6, 2008. Repeat the operational test thereafter at intervals not to exceed 6,000 flight hours or 36 months, whichever occurs first.

Credit for Actions Done According to Previous Issue of Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Boeing Alert 707 Service Bulletin A3527, dated November 7, 2007, are acceptable for compliance with the initial test and related testing and corrective actions required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6438; 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

(i) You must use Boeing 707 Service Bulletin A3527, Revision 1, dated August 6, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact 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 July 2, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–16935 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28988; Directorate Identifier 2007–NM–047–AD; Amendment 39–15975; AD 2009–15–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and –400D Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 747–400 and –400D series airplanes. This AD requires installing new relays to allow the flightcrew to turn off electrical power to the in-flight entertainment (IFE) system and other non-essential passenger cabin systems through the left and right utility bus switches, and other specified actions. This AD results from an IFE systems review. We are issuing this AD to ensure that the flightcrew is able to turn off electrical power to the IFE system and other non-essential passenger cabin systems through utility bus switches in the flight compartment, in the event of smoke or fumes. The flightcrew's inability to turn off electrical power to the IFE system and other non-essential passenger cabin systems could result in the inability to control smoke or fumes in the airplane flight deck or passenger cabin during a non-normal or emergency situation.

DATES: This AD is effective August 25, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 25, 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: Joe Salameh, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6454; 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 747–400 and –400D series airplanes. That NPRM was published in the **Federal Register** on August 16, 2007 (72 FR 45968). That NPRM proposed to require installing new relays to allow the flightcrew to turn off electrical power to the in-flight entertainment (IFE) system and other non-essential passenger cabin systems through the left and right utility bus switches, and other specified actions.

Comments

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

Support for the NPRM

Inflight Canada (IFC) strongly supports the intent of the NPRM.

Request To Clarify Service Bulletin Instructions

Boeing requests that we clarify, in the ''Relevant Service Information'' section of the NPRM, that Boeing Service Bulletin 747–24–2246, dated October 6, 2005, provides procedures for turning off 28 VDC power to the IFE system. Boeing states that all Model 747–400 series airplanes have 115 VAC control, and that representing the proposed actions as addressing electrical power, in general, might be misleading to operators regarding the scope of the action.

We agree to provide clarification. We understand that operators are able to turn off 115 VAC power under the existing configuration for Model 747 series airplanes, and that Boeing Service Bulletin 747–24–2246, dated October 6, 2005, provides changes to also allow for turning off 28 VDC power. Therefore, the wording of the NPRM is appropriate and not misleading, since the intent of this AD is to ensure that all electrical power is removed from the affected systems through the use of the right and left utility bus switches. No change to the AD is necessary in this regard.

Request To Clarify Instructions for Airplanes Modified After Delivery

Boeing requests that we clarify, in the ''Relevant Service Information'' section of the NPRM, that instructions in Boeing service bulletins are based upon the delivered product configuration. Boeing states that it is not obvious to operators that post-production modifications to the IFE system might require an alternative method of compliance (AMOC) to comply with the requirements of the AD.

We agree that operators might not be able to accomplish the requirements of this AD on airplanes that have been modified or altered after airplane delivery. Section 39.17 of the Federal Aviation Regulations (14 CFR 39.17) specifically addresses this situation. If a change in a product affects one's ability to accomplish the actions required by an AD, then a request for FAA approval of an AMOC addressing that configuration must be submitted in accordance with the procedures specified in paragraph (g) of this AD. According to 14 CFR 39.17, the request should include the specific actions that are proposed to address the unsafe condition, unless one can show that the change eliminated the unsafe condition. No change to the AD is necessary in this regard.

Request To Remove Certain Airplanes From the Applicability

Lufthansa states that it has installed two additional Heath Techna power distribution panels (P94 and P9100) on all of its affected airplanes, in accordance with Supplemental Type Certificate (STC) ST01507SE, issued February 11, 2005, amended September 7, 2006. Lufthansa states that, on these modified airplanes, power can be turned off by right and left utility bus switches located in the cockpit. Lufthansa also states that, additionally, the cabin crew is able to turn off power to the IFE and passenger seats using a master switch located in the purser station of the cabin. Since the modification addresses the intent of the NPRM, Lufthansa has asked Boeing to remove all of Lufthansa's airplanes from the effectivity of Boeing Service Bulletin 747–24–2246, dated October 6, 2005. We refer to that service bulletin for the applicability of this AD.

We infer that Lufthansa requests that we remove airplanes modified in accordance with STC ST01507SE from the applicability of this AD. We disagree with revising the applicability of this AD because we have determined that, based upon the delivered airplane configuration, the unsafe condition of this AD applies to the airplanes identified in the effectivity of Boeing Service Bulletin 747–24–2246, dated October 6, 2005. STC ST01507SE, at the time of its issuance, was not evaluated as an AMOC to the requirements of this AD. The design and installation aspects of the STC must be reviewed under an AMOC request submitted by either the STC applicant or the operator. Under the provisions of paragraph (g) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the design change would provide an acceptable level of safety. We have not changed the AD in this regard.

Recommendation To Consider This AD an Interim Action

IFC recommends that we consider the requirements of this AD an interim action. IFC states the final action for eliminating the unsafe condition should be to move the components and wire bundles from the cabin area to areas where they will not be subjected to damage and abuse. IFC states that the cabin sidewalls and the area under the cabin floor offer much safer environments for these items.

We disagree with considering this AD an interim action. The intent of the AD is to address the unsafe condition, not to provide design guidelines for installation of the IFE system. We have determined that the requirements of this AD adequately address the unsafe condition. Should new reports or data arise that show that the unsafe condition has not been adequately addressed by the requirements of this AD, we could consider further rulemaking. No change to the AD is necessary in this regard.

Recommendation To Remove Power From All Components in the Cabin

IFC recommends that the requirement to be able to remove power from the IFE system be expanded to include all components using power in the passenger cabin. IFC states that, in most cases, the In Seat Power Systems (ISPS) and seat adjustment systems carry much

higher power loads than do the IFE components.

We disagree that the scope of the AD needs to be expanded because the ISPS and seat adjustment systems are addressed already as other non-essential cabin systems in Boeing Service Bulletin 747–24–2246, dated October 6, 2005. No change to the AD is necessary in this regard.

Recommendation To Locate Primary Switch in the Passenger Cabin

IFC recommends that the primary switch to isolate the IFE system and other non-essential cabin systems be located in the cabin, rather than in the cockpit. IFC states that, in most cases, the cabin crew will be the first to notice a problem, and that the additional time needed to notify the flightcrew will allow the problem to worsen if not immediately addressed by the trained cabin crew. IFC states that, if desired, a secondary switch could also be located in the cockpit.

We disagree because Boeing's design approach adequately addresses the unsafe condition; the flightcrew can shut off power to any non-essential system in the event of smoke or fire in the flight deck or passenger cabin. However, under the provisions of paragraph (g) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the design change would provide an acceptable level of safety. We have not changed the AD in this regard.

Recommendation to Automatically Turn Off Power in an Emergency

IFC recommends that the system, which will provide the IFE shut-off capability, also be required to automatically turn off power in the event of certain emergencies, such as deployment of oxygen masks or loss of a generator. IFC states that this capability would allow the flightcrew and cabin crew to perform more important tasks without having to be concerned with turning off power to the IFE system.

We disagree with requiring the system to automatically turn off power to the IFE system and other non-essential cabin systems in the event of certain emergencies because, currently, there is no regulatory requirement to have power turned off automatically. We are issuing this AD to address a specific unsafe condition, and the areas discussed by IFC fall outside the requirements of this AD. We have not changed the AD in this regard.

Recommendation To Allow Operators To Develop Other Solutions

IFC states that Boeing Service Bulletin 747–24–2246, dated October 6, 2005, which is referenced as the only acceptable means of complying with the intent of the NPRM, provides only limited protection from the myriad of electrical hazards in the cabin. IFC recommends that we establish the desired functionality of a system for dealing with the electrical hazards, and then allow operators to develop workable solutions using these in combination with other designs to meet the requirements.

We disagree because we are issuing this AD to address a specific unsafe condition, and we have determined that the service information that is currently available adequately addresses that unsafe condition. However, under the provisions of paragraph (g) of this AD, we will consider requests for approval of an AMOC if sufficient data are submitted to substantiate that the design change would provide an acceptable level of safety. We have not changed the AD in this regard.

Conclusion

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

Costs of Compliance

There are about 490 airplanes of the affected design in the worldwide fleet. This AD affects about 62 airplanes of U.S. registry. The required actions take about 123 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost between $9,412 and $11,936 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is up to $1,350,112, or up to $21,776 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2009–15–12 Boeing: Amendment 39–15975. Docket No. FAA–2007–28988; Directorate Identifier 2007–NM–047–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 25, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–400 and –400D series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–24–2246, dated October 6, 2005.

Unsafe Condition

(d) This AD results from an in-flight entertainment (IFE) systems review. We are issuing this AD to ensure that the flightcrew is able to turn off electrical power to the IFE system and other non-essential passenger cabin systems through utility bus switches in the flight compartment, in the event of smoke or fumes. The flightcrew's inability to turn off electrical power to the IFE system and other non-essential passenger cabin systems could result in the inability to control smoke or fumes in the airplane flight deck or passenger cabin during a non-normal or emergency situation.

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.

Install New Relays

(f) Within 60 months after the effective date of this AD, install new relays to allow the flightcrew to turn off electrical power to the IFE system and other non-essential passenger cabin systems through the left and right utility bus switches and do all other specified actions as applicable, by accomplishing all the applicable actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747–24–2246, dated October 6, 2005. The other specified actions must be done before further flight after installing the new relays.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Joe Salameh, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–917–6454; 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 principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(h) You must use Boeing Service Bulletin 747–24–2246, dated October 6, 2005, 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 July 6, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–17118 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30676; Amdt. No. 3330]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 21, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 2009.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. 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.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125); Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for

a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on July 10, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 27 AUG 2009

Deering, AK, Deering, Takeoff Minimums and Obstacle DP, Amdt 1
Egegik, AK, Egegik, Takeoff Minimums and Obstacle DP, Orig
Kaltag, AK, Kaltag, RNAV (GPS) RWY 21, Amdt 1
Koliganek, AK, Koliganek, Takeoff Minimums and Obstacle DP, Amdt 2
Koyuk, AK, Koyuk Alfred Adams, Takeoff Minimums and Obstacle DP, Amdt 1
Scammon Bay, AK, Scammon Bay, Takeoff Minimums and Obstacle DP, Amdt 1
Shaktoolik, AK, Shaktoolik, RNAV (GPS) RWY 14, Orig
Shaktoolik, AK, Shaktoolik, RNAV (GPS) RWY 32, Orig
Shaktoolik, AK, Shaktoolik, Takeoff Minimums and Obstacle DP, Orig
Teller, AK, Teller, Takeoff Minimums and Obstacle DP, Orig
Enterprise, AL, Enterprise Muni, RNAV (GPS) RWY 5, Amdt 1
Enterprise, AL, Enterprise Muni, Takeoff Minimums and Obstacle DP, Orig
Foley, AL, Foley Muni, NDB RWY 18, Amdt 1
Foley, AL, Foley Muni, RNAV (GPS) RWY 18, Amdt 1
Foley, AL, Foley Muni, RNAV (GPS) RWY 36, Amdt 1
Foley, AL, Foley Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Mobile, AL, Mobile Downtown, ILS OR LOC RWY 32, Amdt 2
Mobile, AL, Mobile Downtown, RNAV (GPS) RWY 32, Amdt 1
Mobile, AL, Mobile Downtown, VOR RWY 32, Amdt 11B
Texarkana, AR, Texarkana Rgnl—Webb Field, ILS OR LOC RWY 22, Amdt 16
Texarkana, AR, Texarkana Rgnl—Webb Field, LOC BC RWY 4, Amdt 13
Flagstaff, AZ, Flagstaff Pulliam, GPS RWY 21, Orig–B, CANCELLED
Flagstaff, AZ, Flagstaff Pulliam, RNAV (GPS) Y RWY 21, Orig
Flagstaff, AZ, Flagstaff Pulliam, RNAV (GPS) Z RWY 21, Orig
Grand Junction, CO, Grand Junction Rgnl, RNAV (GPS) RWY 11, Amdt 1
Chester, CT, Chester, RNAV (GPS) RWY 17, Orig
Chester, CT, Chester, RNAV (GPS) RWY 35, Orig
Chester, CT, Chester, VOR–A, Amdt 4
Chester, CT, Chester, VOR/DME RNAV OR GPS RWY 17, Amdt 2, CANCELLED
Chester, CT, Chester, VOR/DME RNAV OR GPS RWY 35, Amdt 1A, CANCELLED
Immokalee, FL, Immokalee Rgnl, RNAV (GPS) RWY 9, Orig
Immokalee, FL, Immokalee Rgnl, RNAV (GPS) RWY 18, Orig
Immokalee, FL, Immokalee Rgnl, RNAV (GPS) RWY 27, Orig
Immokalee, FL, Immokalee Rgnl, RNAV (GPS) RWY 36, Orig
Immokalee, FL, Immokalee Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Immokalee, FL, Immokalee Rgnl, VOR RWY 18, Amdt 6
Orlando, FL, Orlando Intl, ILS OR LOC RWY 17L, ILS RWY17L (CAT II), Amdt 1
Orlando, FL, Orlando Intl, ILS OR LOC RWY 17R, ILS RWY 17R (CAT II), Amdt 5
Orlando, FL, Orlando Intl, ILS OR LOC RWY 18R, Amdt 8
Orlando, FL, Orlando Intl, ILS OR LOC RWY 35L, ILS RWY 35L (CAT II), ILS RWY 35L (CAT III), Amdt 6
Orlando, FL, Orlando Intl, ILS OR LOC RWY 35R, ILS RWY 35R (CAT II), Amdt 1
Orlando, FL, Orlando Intl, ILS OR LOC RWY 36R, ILS RWY 36R (CAT II), ILS RWY 36R (CAT III), Amdt 9
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 17L, Orig-B, CANCELLED
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 17R, Orig-C, CANCELLED
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 18L, Amdt 1, CANCELLED
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 18R, Orig-A, CANCELLED
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 35L, Orig-B, CANCELLED
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 35R, Orig-A, CANCELLED
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 36L, Amdt 1, CANCELLED
Orlando, FL, Orlando Intl, RNAV (GPS) RWY 36R, Orig-B, CANCELLED

Orlando, FL, Orlando Intl, RNAV (GPS) Y RWY 17L, Orig
Orlando, FL, Orlando Intl, RNAV (GPS) Y RWY 17R, Orig
Orlando, FL, Orlando Intl, RNAV (GPS) Y RWY 18L, Orig
Orlando, FL, Orlando Intl, RNAV (GPS) Y RWY 18R, Orig
Orlando, FL, Orlando Intl, RNAV (GPS) Y RWY 35L, Orig
Orlando, FL, Orlando Intl, RNAV (GPS) Y RWY 35R, Orig
Orlando, FL, Orlando Intl, RNAV (GPS) Y RWY 36L, Orig
Orlando, FL, Orlando Intl, RNAV (GPS) Y RWY 36R, Orig
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 17L, Orig
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 17R, Orig
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 18L, Orig
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 18R, Orig
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 35L, Orig
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 35R, Orig
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 36L, Orig
Orlando, FL, Orlando Intl, RNAV (RNP) Z RWY 36R, Orig
St Marys, GA, St Marys, RNAV (GPS) RWY 13, Amdt 1
St Marys, GA, St Marys, RNAV (GPS) RWY 31, Amdt 1
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (GPS) Y RWY 10L, Amdt 2A
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (GPS) Y RWY 10R, Amdt 1A
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (GPS) Y RWY 28L, Amdt 4
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (GPS) Y RWY 28R, Amdt 3
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (RNP) Z RWY 10L, Orig
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (RNP) Z RWY 10R, Orig
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (RNP) Z RWY 28L, Orig
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (RNP) Z RWY 28R, Orig
Peoria, IL, Mount Hawley Auxiliary, RNAV (GPS) RWY 18, Orig
Peoria, IL, Mount Hawley Auxiliary, Takeoff Minimums and Obstacle DP, Amdt 2
Peoria, IL, Mount Hawley Auxiliary, VOR–A, Amdt 4
North Vernon, IN, North Vernon, GPS RWY 23, Orig-A, CANCELLED
North Vernon, IN, North Vernon, NDB OR GPS RWY 5, Amdt 5, CANCELLED
North Vernon, IN, North Vernon, RNAV (GPS) RWY 5, Orig
North Vernon, IN, North Vernon, RNAV (GPS) Y RWY 23, Orig
North Vernon, IN, North Vernon, RNAV (GPS) Z RWY 23, Orig
North Vernon, IN, North Vernon, Takeoff Minimums and Obstacle DP, Orig
South Bend, IN, South Bend Rgnl, RNAV (GPS) RWY 36, Amdt 1
South Bend, IN, South Bend Rgnl, Takeoff Minimums and Obstacle DP, Amdt 9
Oakdale, LA, Allen Parish, RNAV (GPS) RWY 18, Orig
Oakdale, LA, Allen Parish, RNAV (GPS) RWY 36, Amdt 2
Shreveport, LA, Shreveport Rgnl, ILS OR LOC RWY 14, ILS RWY 14 (CAT II), Amdt 25
Shreveport, LA, Shreveport Rgnl, ILS OR LOC RWY 32, Amdt 5
Shreveport, LA, Shreveport Rgnl, RNAV (GPS) RWY 5, Amdt 1
Shreveport, LA, Shreveport Rgnl, RNAV (GPS) RWY 14, Amdt 1
Shreveport, LA, Shreveport Rgnl, RNAV (GPS) RWY 32, Amdt 1
Marshfield, MA, Marshfield Muni-George Harlow Field, NDB RWY 24, Amdt 2
Ocean City, MD, Ocean City Muni, RNAV (GPS) RWY 32, Orig
Pontiac, MI, Oakland County Intl, ILS OR LOC RWY 9R, Amdt 12
Winona, MN, Winona Muni-Max Conrad Fld, LOC RWY 30, Orig
Winona, MN, Winona Muni-Max Conrad Fld, NDB RWY 30, Orig
Maryville, MO, Northwest Missouri Rgnl, RNAV (GPS) RWY 32, Orig
New Madrid, MO, County Memorial, RNAV (GPS) RWY 18, Orig
New Madrid, MO, County Memorial, RNAV (GPS) RWY 36, Orig
New Madrid, MO, County Memorial, VOR/DME–A, Amdt 4
New Madrid, MO, County Memorial, VOR/DME RNAV OR GPS RWY 18, Amdt 1B, CANCELLED
St Louis, MO, Spirit of St Louis, ILS OR LOC RWY 8R, Amdt 14
St Louis, MO, Spirit of St Louis, NDB RWY 26L, Amdt 3
St Louis, MO, Spirit of St Louis, RNAV (GPS) RWY 8L, Orig
St Louis, MO, Spirit of St Louis, RNAV (GPS) RWY 8R, Orig
St Louis, MO, Spirit of St Louis, RNAV (GPS) RWY 26L, Orig
St Louis, MO, Spirit of St Louis, RNAV (GPS) RWY 26R, Orig
Sullivan, MO, Sullivan Rgnl, GPS RWY 24, Orig CANCELLED
Sullivan, MO, Sullivan Rgnl, RNAV (GPS) RWY 6, Orig
Sullivan, MO, Sullivan Rgnl, RNAV (GPS) RWY 24, Orig
Aberdeen/Amory, MS, Monroe County, RNAV (GPS) RWY 18, Amdt 1
Aberdeen/Amory, MS, Monroe County, RNAV (GPS) RWY 36, Amdt 1
Aberdeen/Amory, MS, Monroe County, VOR RWY 18, Amdt 7
Missoula, MT, Missoula Intl, RNAV (GPS) Y RWY 11, Amdt 1
Missoula, MT, Missoula Intl, RNAV (RNP) RWY 29, Orig
Missoula, MT, Missoula Intl, RNAV (RNP) Z RWY 11, Orig
Devils Lake, ND, Devils Lake Rgnl, GPS RWY 13, Orig-A, CANCELLED
Devils Lake, ND, Devils Lake Rgnl, GPS RWY 31, Orig-A, CANCELLED
Devils Lake, ND, Devils Lake Rgnl, RNAV (GPS) RWY 13, Orig
Devils Lake, ND, Devils Lake Rgnl, RNAV (GPS) RWY 31, Orig
Jamestown, ND, Jamestown Rgnl, RNAV (GPS) RWY 31, Orig
Jamestown, ND, Jamestown Rgnl, VOR RWY 31, Amdt 9
Tioga, ND, Tioga Muni, GPS RWY 30, Orig, CANCELLED
Tioga, ND, Tioga Muni, RNAV (GPS) RWY 30, Orig
Tioga, ND, Tioga Muni, Takeoff Minimums and Obstacle DP, Orig
Minden, NE, Pioneer Village Field, GPS RWY 34, Orig-A, CANCELLED
Minden, NE, Pioneer Village Field, RNAV (GPS) RWY 16, Orig
Minden, NE, Pioneer Village Field, RNAV (GPS) RWY 34, Orig
Minden, NE, Pioneer Village Field, Takeoff Minimums and Obstacle DP, Amdt 1
Rushville, NE, Modisett, RNAV(GPS)RY 14, Orig
Rushville, NE, Modisett, RNAV(GPS)RY 32, Orig
Rushville, NE, Modisett, Takeoff Minimums and Obstacle DP, Orig
Manchester, NH, Manchester, RNAV (GPS) RWY 6, Amdt 2
Manchester, NH, Manchester, RNAV (GPS) RWY 35, Orig
Old Bridge, NJ, Old Bridge, RNAV (GPS) RWY 6, Orig
Old Bridge, NJ, Old Bridge, RNAV (GPS) RWY 24, Orig
Old Bridge, NJ, Old Bridge, Takeoff Minimums and Obstacle DP, Amdt 1
Old Bridge, NJ, Old Bridge, VOR RWY 24, Amdt 4
Woodbine, NJ, Woodbine Muni, GPS RWY 1, Orig-B, CANCELLED
Woodbine, NJ, Woodbine Muni, GPS RWY 19, Orig-B, CANCELLED
Woodbine, NJ, Woodbine Muni, RNAV (GPS) RWY 1, Orig
Woodbine, NJ, Woodbine Muni, RNAV (GPS) RWY 19, Orig
Woodbine, NJ, Woodbine Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Woodbine, NJ, Woodbine Muni, VOR–A, Amdt 1
Farmington, NM, Four Corner Rgnl, RNAV (GPS) RWY 23, Amdt 1
Hobbs, NM, Lea County Rgnl, RNAV (GPS) RWY 3, Amdt 1
Socorro, NM, Socorro Muni, GPS RWY 33, Orig-B, CANCELLED
Socorro, NM, Socorro Muni, RNAV (GPS) Y RWY 33, Orig
Socorro, NM, Socorro Muni, RNAV (GPS) Z RWY 33, Orig
Socorro, NM, Socorro Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Saratoga Springs, NY, Saratoga County, RNAV (GPS) RWY 23, Amdt 1
Ottawa, OH, Putnam County, RNAV (GPS) RWY 9, Orig
Ottawa, OH, Putnam County, RNAV (GPS) RWY 27, Orig
Ottawa, OH, Putnam County, Takeoff Minimums and Obstacle DP, Orig
Ottawa, OH, Putnam County, VOR RWY 27, Amdt 2
Wilmington, OH, Airborne Airpark, RNAV (GPS) RWY 4L, Orig
Wilmington, OH, Airborne Airpark, RNAV (GPS) RWY 22R, Orig
Wilmington, OH, Airborne Airpark, Takeoff Minimums and Obstacle DP, Orig
Wilmington, OH, Airborne Airpark, VOR/DME RWY 22R, Amdt 5
Claremore, OK, Claremore Rgnl, RNAV (GPS) RWY 17, Orig

Claremore, OK, Claremore Rgnl, RNAV (GPS) RWY 35, Amdt 2
Claremore, OK, Claremore Rgnl, Takeoff Minimum and Obstacle DP, Orig
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 18R, Amdt 1
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 26, Amdt 2
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 36R, Amdt 1
Woodward, OK, West Woodward, GPS RWY 17, Orig, CANCELLED
Woodward, OK, West Woodward, GPS RWY 35, Amdt 1, CANCELLED
Woodward, OK, West Woodward, RNAV (GPS) RWY 17, Orig
Woodward, OK, West Woodward, RNAV (GPS) RWY 35, Orig
Pottsville, PA, Schuylkill County/Joe Zerbey, RNAV (GPS) RWY 11, Amdt 1
Pottsville, PA, Schuylkill County/Joe Zerbey, RNAV (GPS) RWY 29, Amdt 1
Pottsville, PA, Schuylkill County/Joe Zerbey, Takeoff Minimums and Obstacle DP, Amdt 2
York, PA, York, GPS RWY 35, Amdt 2A, CANCELLED
York, PA, York, RNAV (GPS) RWY 17, Amdt 1
York, PA, York, RNAV (GPS) RWY 35, Orig
Columbia, SC, Columbia Metropolitan, ILS OR LOC RWY 11, ILS RWY 11 (CAT II), ILS RWY 11 (CAT III), Amdt 15
Columbia, SC, Columbia Metropolitan, RNAV (GPS) RWY 5, Amdt 2
Columbia, SC, Columbia Metropolitan, RNAV (GPS) RWY 11, Amdt 1
Columbia, SC, Columbia Metropolitan, RNAV (GPS) RWY 23, Amdt 2
Columbia, SC, Columbia Metropolitan, RNAV (GPS) RWY 29, Amdt 1
Columbia, SC, Columbia Metropolitan, Takeoff Minimums and Obstacle DP, Amdt 1
Columbia, SC, Columbia Metropolitan, VOR–A, Amdt 16
Aberdeen, SD, Aberdeen Rgnl, RNAV (GPS) RWY 13, Orig
Aberdeen, SD, Aberdeen Rgnl, RNAV (GPS) RWY 31, Orig
Huron, SD, Huron Rgnl, ILS OR LOC RWY 12, Amdt 10
Huron, SD, Huron Rgnl, NDB RWY 12, Amdt 20C, CANCELLED
Huron, SD, Huron Rgnl, RNAV (GPS) RWY 12, Orig
Huron, SD, Huron Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5
Huron, SD, Huron Rgnl, VOR RWY 12, Amdt 22
Camden, TN, Benton County, RNAV (GPS) RWY 4, Orig
Camden, TN, Benton County, RNAV (GPS) RWY 22, Orig
Camden, TN, Benton County, Takeoff Minimums and Obstacle DP, Amdt 1
Camden, TN, Benton County, VOR/DME RWY 4, Amdt 4
Memphis, TN, Memphis Intl, RNAV (RNP) X RWY 18R, Orig-A
Fort Stockton, TX, Fort Stockton-Pecos County, RNAV (GPS) RWY 12, Amdt 1
Fort Stockton, TX, Fort Stockton-Pecos County, RNAV (GPS) RWY 30, Amdt 1
Fort Stockton, TX, Fort Stockton-Pecos County, Takeoff Minimums and Obstacle DP, Orig
Midlothian/Waxahachie, TX, Mid-Way Rgnl, GPS RWY 36, Orig, CANCELLED
Midlothian/Waxahachie, TX, Mid-Way Rgnl, RNAV (GPS) RWY 36, Orig
Wharton, TX, Wharton Rgnl, RNAV (GPS) RWY 14, Orig
Wharton, TX, Wharton Rgnl, RNAV (GPS) RWY 32, Orig
Wharton, TX, Wharton Rgnl, Takeoff Minimums and Obstacle DP, Orig
Wharton, TX, Wharton Rgnl, VOR/DME–A, Amdt 5
Platteville, WI, Platteville Muni, GPS RWY 33, Orig, CANCELLED
Platteville, WI, Platteville Muni, RNAV (GPS) RWY 7, Orig
Platteville, WI, Platteville Muni, RNAV (GPS) RWY 15, Orig
Platteville, WI, Platteville Muni, RNAV (GPS) RWY 25, Orig
Platteville, WI, Platteville Muni, RNAV (GPS) RWY 33, Orig
Platteville, WI, Platteville Muni, Takeoff Minimums and Obstacle DP, Orig
Wheeling, WV, Wheeling Ohio Co, ILS OR LOC RWY 3, Amdt 22
Wheeling, WV, Wheeling Ohio Co, RNAV (GPS) RWY 3, Orig
Wheeling, WV, Wheeling Ohio Co, RNAV (GPS) RWY 16, Orig
Wheeling, WV, Wheeling Ohio Co, RNAV (GPS) RWY 21, Orig-A
Wheeling, WV, Wheeling Ohio Co, RNAV (GPS) RWY 34, Orig
Kemmerer, WY, Kemmerer Muni, RNAV (GPS) RWY 16, Amdt 1
Kemmerer, WY, Kemmerer Muni, RNAV (GPS) RWY 34, Amdt 1
Kemmerer, WY, Kemmerer Muni, Takeoff Minimums and Obstacle DP, Amdt 1

[FR Doc. E9–17110 Filed 7–20–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30677; Amdt. No. 3331]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 21, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 2009.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. 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.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National

Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on July 10, 2009.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
06/26/09 ...	CT	GROTON/NEW LONDON	GROTON-NEW LONDON	9/5843	RNAV (GPS) RWY 5, ORIG–A.
06/26/09 ...	CT	GROTON/NEW LONDON	GROTON-NEW LONDON	9/5844	RNAV (GPS) RWY 23, ORIG.
06/29/09 ...	WA	RICHLAND	RICHLAND	9/6164	RNAV (GPS) RWY 19, ORIG–A.
06/29/09 ...	WA	RICHLAND	RICHLAND	9/6165	RNAV (GPS) RWY 26, ORIG–A.
07/01/09 ...	CA	CRESCENT CITY	MC NAMARA FIELD	9/6439	VOR/DME RWY 11, AMDT 12.
07/01/09 ...	WA	BELLINGHAM	BELLINGHAM INTL	9/6502	RNAV (GPS) RWY 34, ORIG.
07/01/09 ...	CO	HOLYOKE	HOLYOKE	9/6548	RNAV (GPS) RWY 14, ORIG.
07/01/09 ...	CO	HOLYOKE	HOLYOKE	9/6549	RNAV (GPS) RWY 32, ORIG.
07/07/09 ...	OH	PORT CLINTON	CARL R. KELLER FIELD	9/7334	NDB RWY 27, AMDT 13.
07/09/09 ...	CA	COLUSA	COLUSA COUNTY	9/7756	GPS RWY 31, ORIG–A.
07/09/09 ...	CA	COLUSA	COLUSA COUNTY	9/7757	GPS RWY 13, ORIG.
07/09/09 ...	CA	COLUSA	COLUSA COUNTY	9/7758	VOR–A, AMDT 4C.

[FR Doc. E9–17107 Filed 7–20–09; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 090414651–91046–01]

RIN 0694–AE59

Addition and Removal of Certain Persons on the Entity List: Addition of Persons Acting Contrary to the National Security or Foreign Policy Interests of the United States; Removal of Persons Based on ERC Annual Review and Removal Requests; and Entry Modified for Purposes of Clarification

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding thirteen additional persons to the Entity List (Supplement No. 4 to Part 744) on the basis of Section 744.11 of the EAR. The persons that are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. This rule also amends the Export Administration Regulations by removing three persons from the Entity List. BIS removes one of the three persons from the Entity List as a result of a determination made by the United States Government during the annual review of the Entity List conducted by the End-User Review Committee (ERC). The two remaining persons are removed from the Entity List in response to a request for removal. Finally, this rule makes a correction to the address of one person listed on the Entity List. The Entity List provides notice to the public that certain exports and reexports to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of License Exceptions in such transactions is limited.

DATES: Effective Date: This rule is effective July 21, 2009. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE59, by any of the following methods:

E-mail: publiccomments@bis.doc.gov. Include ''RIN 0694-AE59'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AE59.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St., & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.,* RIN 0694–AE59)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scott Sangine, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–3343, Fax: (202) 482–3911, E-mail: *bscott@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Entity List provides notice to the public that certain exports and reexports to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of License Exceptions in such transactions is limited. BIS first published the Entity List in February 1997 as part of its efforts to inform the public of entities that have engaged in activities that could result in an increased risk of diversion of exported and reexported items to weapons of mass destruction (WMD) programs. Since its initial publication, grounds for inclusion on the Entity List have expanded to activities sanctioned by the Department of State and activities contrary to U.S. national security and/or foreign policy interests.

ERC Entity List Decisions

Pursuant to Supplement No. 5 to part 744 (Procedures for End-User Review Committee Entity List Decisions) of the EAR, the ERC, composed of representatives of the Departments of Commerce, State, Defense, Energy and, where appropriate, the Treasury, makes all decisions to make additions to, removals from or changes to the Entity List. The ERC is chaired by the Department of Commerce and makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

The ERC made a determination to add thirteen persons to the Entity List on the basis of § 744.11 (License Requirements that Apply to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States) of the EAR. The thirteen entities added to the Entity List consist of three persons in Germany, five persons in Hong Kong and five persons in Ireland.

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these persons to the Entity List. Under that paragraph, entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entity has been involved, is involved, or poses a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such entities may be added to the Entity List pursuant to § 744.11.

Paragraph (b) of § 744.11 includes an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. This illustrative list of activities of concern is described under paragraphs (b)(1)–(b)(5). The persons being added to the Entity List under this rule have been determined by the ERC to be involved in activities that could be contrary to the national security or foreign policy interests of the United States.

In addition, the ERC made a determination to remove three entities from the Entity List. As outlined in Supplement No. 5 to part 744, under the last paragraph of that Supplement, the ERC conducts a systematic review of the Entity List. Based upon the results of that annual review, the ERC made a determination that one person in Pakistan should be removed from the Entity List, because this person is not engaged in activities that would warrant including the person on the Entity List.

The ERC also made a determination to remove two other persons, located in the United Arab Emirates, as a result of a request for removal submitted by these two listed entities. Based upon the review of the information provided in the removal request, in accordance with § 744.16 and further review that was

conducted by the ERC's member agencies of these end-users, the ERC determined that these two persons should be removed from the Entity List. The ERC decision to remove Feroz Jafar and Telectron took into account these two listed persons' cooperation with the U.S. Government, as well as these listed persons' assurances of future compliance with the EAR. In accordance with § 744.16(c), the Deputy Assistant Secretary for Export Administration has sent written notification to these persons informing them of the ERC's decision to remove them from the Entity List.

Additions to the Entity List

This rule implements the decision of the ERC to add thirteen persons to the Entity List on the basis of § 744.11 of the EAR. For all of the thirteen persons added to the Entity List, the ERC specified a license requirement for all items subject to the EAR and established a license application review policy of a general policy of denial. The license requirement applies to any transaction in which items are to be exported or reexported to such persons or in which such persons act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for shipments to those persons being added to the Entity List.

Specifically, this rule adds the following thirteen persons to the Entity List:

Germany

(1) *Christof Schneider*, Margaretenweg #10, 42929 Wermelskirchen, Germany;

(2) *Hans Werner Schneider*, Bertha von Suttner Weg #1, 42929 Wermelskirchen, Germany; and

(3) *Schneider GMBH*, Thomas Mann Str. 35–37, 42929 Wermelskirchen, Germany; *and* P.O. Box 1523, Wermelskirchen, 42908 DE; *and* Thomas Mann Str., 35–37, P.O. Box 1523, Wermelskirchen, 42908 DE.

Hong Kong

(4) *Able City Development Limited*, Unit C, 9/F Neich Tower, 128 Gloucester Road, Wanchai, Hong Kong; *and* Unit 401, Harbour Ctr., Tower 2, 8 Hok Cheung Street, Hung Hom, Kowloon, Hong Kong;

(5) *Sik Yin Ngai, a.k.a., Spencer Ngai*, Unit 401, Harbour Ctr., Tower 2, 8 Hok Cheung Street Hung Hom, Kowloon, Hong Kong;

(6) *Siu Ching Ngai, a.k.a., Terry Ngai,* Unit C, 9/F Neich Tower, 128 Gloucester Road, Wanchai, Hong Kong;

(7) *Sysdynamic Limited*, Unit 716A, 7/F Enterprise Place (Building 9), No. 5 Science Park West Avenue, Hong Kong Science Park, Shatin, New Territories, Hong Kong; *and* Unit 401, Harbour Ctr., Tower 2, 8 Hok Cheung Street, Hung Hom, Kowloon, Hong Kong; and

(8) *Tam Shue Ngai*, Unit C, 9/F Neich Tower, 128 Gloucester Road, Wanchai, Hong Kong.

Ireland

(9) *Mac Aviation Group, a.k.a., Mac Aviation Limited,* Cloonmull House, Drumcliffe, County Sligo, Ireland;

(10) *Mac Aviation Nigeria*, Cloonmull House, Drumcliffe, County Sligo, Ireland;

(11) *Sean Byrne*, Cloonmull House, Drumcliffe, County Sligo, Ireland;

(12) *Sean McGuinn*, Cloonmull House, Drumcliffe, County Sligo, Ireland; and

(13) *Thomas McGuinn a.k.a., Tom McGuinn*, Cloonmull House, Drumcliffe, County Sligo, Ireland.

A BIS license is required for the export or reexport of any item subject to the EAR to any of the persons listed above, including any transaction in which any of the listed persons will act as purchaser, intermediate consignee, ultimate consignee, or end-user of the items. This listing of these persons also prohibits the use of License Exceptions (*see* part 740 of the EAR) for exports and reexports of items subject to the EAR involving such persons.

Removal From the Entity List

One person being removed from the Entity List with this rule is removed on the basis of the results of the annual review of the Entity List that was conducted by the ERC in accordance with the procedures outlined in Supplement No. 5 to part 744. The entity is located in Pakistan:

Pakistan

(1) *Karachi CBW Research Institute, University of Karachi's Husein Ebrahim Jamal Research Institute of Chemistry (HEJRIC).*

Two additional persons are being removed under this rule as a result of the submission of a formal request for removal based upon the procedures outlined in § 744.16 of the EAR. These two entities are located in the United Arab Emirates:

United Arab Emirates

(2) *Feroz Jafar*, Al Salam St., P.O. Box 2946 Abu Dhabi, U.A.E.; and

(3) *Telectron*, Al Salam St., P.O. Box 2946, Abu Dhabi, U.A.E.

The removal of these three persons from the Entity List eliminates the existing license requirements in Supplement No. 4 to part 744 for exports and reexports to these persons. However, the removal of these persons from the Entity List does not relieve persons of other obligations under part 744 of the EAR or under other parts of the EAR. Neither the removal of a person from the Entity List nor the removal of Entity List-based license requirements relieves persons of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' Nor do such removals relieve persons of their obligation to apply for export or reexport licenses required by other provisions of the EAR. BIS strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BIS's 'Know Your Customer' Guidance and Red Flags,'' when persons are involved in transactions that are subject to the EAR.

Correction to the Entity List

This rule revises the address provided for one person that was listed on the Entity List from the United Arab Emirates. Specifically, this rule to correct an inadvertent removal of the name of the city where the person is located, which occurred in a December 5, 2008 (73 FR 73999) final rule that revised this entry.

This rule revises the name and address of this one listed person, as follows:

United Arab Emirates

(1) *Advanced Technology General Trading Company,* Dubai, U.A.E. (See alternate address under Kuwait).

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on July 21, 2009, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before August 20, 2009. Any such items not actually exported or reexported before midnight on August 20, 2009, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order

13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of July 23, 2008, 73 FR 43603 (July 23, 2008), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are expected to increase slightly as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of July 23, 2008, 73 FR 43603 (July 25, 2008); Notice of November 10, 2008, 73 FR 67097 (November 12, 2008).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. By removing under Pakistan, this one Pakistani entity ''Karachi CBW Research Institute, University of Karachi's Husein Ebrahim Jamal Research Institute of Chemistry (HEJRIC)'';

■ b. By removing under United Arab Emirates, these two U.A.E. entities ''Feroz Jafar, Al Salam St., P.O. Box 2946, Abu Dhabi, U.A.E.''; and ''Telectron, Al Salam St., P.O. Box 2946, Abu Dhabi, U.A.E.'';

■ c. By adding under Germany, in alphabetical order, three German entities;

■ d. By adding under Hong Kong, in alphabetical order, five Hong Kong entities;

■ e. By adding, in alphabetical order, the country of Ireland and five Irish entities; and

■ f. By revising under United Arab Emirates, in alphabetical order, one U.A.E. entity.

The additions and revision read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
GERMANY				
*	*	*	*	*
	Christof Schneider, Margaretenweg #10, 42929 Wermelskirchen, Germany.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
*	*	*	*	*
	Hans Werner Schneider, Bertha von Suttner Weg #1, 42929 Wermelskirchen, Germany.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
*	*	*	*	*
	Schneider GMBH, Thomas Mann Str. 35–37, 42929 Wermelskirchen, Germany; and P.O. Box 1523, Wermelskirchen, 42908 DE; and Thomas Mann Str., 35–37, P.O. Box 1523, Wermelskirchen, 42908 DE.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
HONG KONG	Able City Development Limited, Unit C, 9/F Neich Tower, 128 Gloucester Road, Wanchai, Hong Kong; and Unit 401, Harbour Ctr., Tower 2, 8 Hok Cheung Street, Hung Hom, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	* *	*	*
	Sik Yin Ngai, a.k.a. Spencer Ngai, Unit 401, Harbour Ctr., Tower 2, 8 Hok Cheung Street, Hung Hom, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
	Siu Ching Ngai, a.k.a. Terry Ngai, Unit C, 9/F Neich Tower, 128 Gloucester Road, Wanchai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
*	* * *	* *	*	*
	Sysdynamic Limited, Unit 716A, 7/F Enterprise Place (Building 9), No. 5 Science Park West Avenue, Hong Kong Science Park, Shatin, New Territories, Hong Kong; and Unit 401, Harbour Ctr., Tower 2, 8 Hok Cheung Street, Hung Hom, Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
	Tam Shue Ngai, Unit C, 9/F Neich Tower, 128 Gloucester Road, Wanchai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
*	* * *	* *	*	*
IRELAND	Mac Aviation Group, a.k.a. Mac Aviation Limited, Cloonmull House, Drumcliffe, County Sligo, Ireland.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
	Mac Aviation Nigeria, Cloonmull House, Drumcliffe, County Sligo, Ireland.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
	Sean Byrne, Cloonmull House, Drumcliffe, County Sligo, Ireland.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
	Sean McGuinn, Cloonmull House, Drumcliffe, County Sligo, Ireland.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
	Thomas McGuinn a.k.a. Tom McGuinn, Cloonmull House, Drumcliffe, County Sligo, Ireland.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
*	* * *	* *	*	*
UNITED ARAB EMIRATES.	Advanced Technology General Trading Company, Dubai, U.A.E. (See alternate address under Kuwait).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	73 FR 54509 9/22/08 73 FR 74001 12/5/08 74 FR [INSERT FR PAGE NUMBER], July 21, 2009.
*	* * *	* *	*	*

Dated: July 16, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9–17295 Filed 7–20–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

[Docket No. FDA–2009–N–0310]

Advisory Committee; Risk Communication Advisory Committee; Termination and Recharter

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the termination and the recharter of the Risk Communication Advisory Committee (the committee). These actions are needed to implement the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Amendments Act of 2007, to change the committee from a discretionary to a statutory committee. This document also amends the agency's regulations which list advisory committees to reflect that the Risk Communication Advisory Committee has been rechartered and to revise the function statement.

DATES: This rule is effective July 21, 2009. The committee is being rechartered and the new charter will remain in effect until amended or terminated by the Commissioner of Food and Drugs (the Commissioner) or designee.

FOR FURTHER INFORMATION CONTACT: Lee Zwanziger, Office of Policy and Planning (HFP–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2895, FAX: 301–827–4050, or e-mail: *Lee.Zwanziger@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463 (5 U.S.C. app. 2)); section 904 of the act (21 U.S.C. 394), as amended by the Food and Drug Administration Revitalization Act (Public Law 101–635); and 21 CFR 14.40(b), FDA is announcing the termination and the recharter of the committee by the Commissioner. The committee advises the Commissioner and designees on methods to effectively communicate risks associated with products regulated by FDA, and in discharging responsibilities as they relate to helping ensure safe and effective drugs for human use and any other product for which FDA has regulatory responsibility. The committee also reviews and evaluates strategies and programs designed to communicate with the public about the risks and benefits of FDA-regulated products so as to facilitate optimal use of these products. In addition, the committee reviews and evaluates research relevant to such communication to the public by both FDA and other entities. It also facilitates interactively sharing risk and benefit information with the public to enable people to make informed independent judgments about using FDA-regulated products.

The committee will be composed of a core of 15 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in fields such as social marketing, health literacy, and other relevant areas. Members will include experts on risk communication; experts on emerging postmarket drug risks; and individuals knowledgeable about and experienced in the work of patient, consumer, and health professional organizations. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. Some members will be selected to provide experiential insight on the communication needs of the various groups who use FDA-regulated products. The latter may include patients and patients' family members; health professionals; communicators in health, medicine, and science; and persons affiliated with consumer, specific disease, or patient safety advocacy groups. The Commissioner or designee shall also have the authority to select from a group of individuals nominated by industry to serve temporarily as nonvoting members who are identified with industry interests. The number of temporary members selected for a particular meeting will depend on the meeting topic(s).

Under 5 U.S.C. 553(b)(3)(B) and (d) and 21 CFR 10.40(d) and (e), the agency finds good cause to dispense with notice and public comment procedures and to proceed to an immediate effective date on this rule. Notice and public comment and a delayed effective date are unnecessary and are not in the public interest as this final rule merely amends the information in § 14.100 (21 CFR 14.100) to reflect the rechartering of the committee and to revise the function statement.

Therefore, the agency is amending § 14.100(a)(4)(i) and (a)(4)(ii) as set forth in the regulatory text of this document.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461, 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264; Pub. L. 107–109; Pub. L. 108–155.

■ 2. Section 14.100 is amended by revising paragraphs (a)(4)(i) and (a)(4)(ii) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(a) * * *

(4) * * *

(i) Date Rechartered: July 9, 2009.

(ii) Function: The committee reviews and evaluates strategies and programs designed to communicate with the public about the risks and benefits of FDA-regulated products so as to facilitate optimal use of these products. The committee also reviews and evaluates research relevant to such communication to the public by both FDA and other entities. It also facilitates interactively sharing risk and benefit information with the public to enable people to make informed independent judgments about use of FDA-regulated products.

* * * * *

Dated: July 10, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–17218 Filed 7–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 543

Persons Contributing to the Conflict in Côte d'Ivoire Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is amending the Persons Contributing to the Conflict in Côte d'Ivoire Sanctions Regulations, 31 CFR part 543 (the ''Regulations''), to change the heading of the Regulations.

DATES: *Effective Date:* July 21, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, *tel.:* 202/622–2490, Assistant Director for Licensing, *tel.:* 202/622–2480, Assistant Director for Policy, *tel.:* 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), *tel.:* 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, *tel.:* (202) 622–0077.

Background

OFAC promulgated the Persons Contributing to the Conflict in Côte d'Ivoire Sanctions Regulations, 31 CFR part 543 (the ''Regulations''), on April 13, 2009 (74 FR 16763), to implement Executive Order 13396 of February 7, 2006 (''E.O. 13396''). In E.O. 13396, the President determined that the situation in Côte d'Ivoire, which has resulted in the massacre of large numbers of civilians, widespread human rights abuses, significant political violence and unrest, and attacks against international peacekeeping forces leading to fatalities, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States, and declared a national emergency to deal with that threat.

OFAC today is amending the Regulations to change their heading to the ''Côte d'Ivoire Sanctions Regulations'' for the sake of consistency with other sanctions regulations.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects in 31 CFR Part 543

Administrative practice and procedure, Banks, Banking, Blocking of assets, Côte d'Ivoire, Credit, Foreign Trade, Penalties, Reporting and recordkeeping requirements, Securities, Services.

■ For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends part 543 of 31 CFR Chapter V as follows:

PART 543—CÔTE D'IVOIRE SANCTIONS REGULATIONS

■ 1. The authority citation to part 543 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 13396, 71 FR 7389, 3 CFR, 2006 Comp., p. 209.

■ 2. The heading of part 543 is revised to read as set forth above.

Dated: July 15, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–17249 Filed 7–20–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2009–0591]

Drawbridge Operation Regulations; Illinois Waterway, Beardstown, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operations of the Burlington Northern Santa Fe Railroad Bridge, Mile 88.8, at Beardstown, Illinois across the Illinois Waterway. The deviation is necessary to allow time for upgrade of the lift drive mechanism which only can be done when the bridge is in the closed-to-navigation position. This deviation allows the bridge to remain closed-to-navigation during the 60-hour period July 27–29, 2009.

DATES: This deviation is effective from 8 a.m., July 27 to 8 p.m., July 29, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in docket are part of docket USCG–2009–0591 and are available online by going to *www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0591 in the docket ID box, pressing Enter, and then clicking on the item on the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Roger K. Wiebusch, Bridge Administrator, Coast Guard; telephone (314) 269–2378 or *Roger.K.Wiebusch@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Burlington Northern Santa Fe Railway Company requested a temporary deviation for the Burlington Northern Santa Fe (BNSF) Railroad Bridge, mile 88.8, at Beardstown, Illinois across the Illinois Waterway. It has a vertical clearance of 19.6 feet above normal pool

in the closed position. The BNSF Railroad Bridge currently operates in accordance with 33 CFR 117.393(a) which requires that the bridge be maintained in the open-to-navigation position; closing only when a train needs to transit the bridge.

The deviation period is from 8 a.m., July 27 to 8 p.m., July 29, 2009 when the draw span will be maintained in the closed-to-navigation position. During this time the lift drive mechanism will be inoperative. The draw span will not be returned to its fully open position until the lift drive mechanism is fully operational on August 2, 2009. During the period July 30–August 2, 2009 span openings will be coordinated with rail traffic closures and efforts to return the bridge to normal operations. Both commercial vessels and recreational watercraft use the waterway. Most commercial vessels can not pass underneath the bridge while it is in the closed position. Only vessels having a low-clearance profile will be able to pass under the span while in the closed position. There are no alternate routes for vessels transiting this section of the Illinois Waterway. Minimal impact to navigation is expected.

In accordance with 33 CFR 117.393(a), the drawbridge shall return to its normal operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35(c).

Dated: June 6, 2009.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. E9–17196 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0649]

RIN 1625–AA00

Safety Zone; Friends of Fireworks Celebration, Lake Huron, St. Ignace, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Huron, St. Ignace, MI. This zone is intended to restrict vessels from a portion of Lake Huron during the Friends of Fireworks Celebration fireworks displays taking place July 11 through September 5, 2009. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. on July 11, 2009, until 11 p.m. on September 5, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0649 and are available online at *http://www.regulations.gov* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0649 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LCDR Christopher Friese, Prevention Dept. Chief, U.S. Coast Guard Sector Sault Sainte Marie, 906–635–3220 or email *Christopher.R.Friese@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the permit application was not received in time to publish a NPRM followed by a final rule before the effective date and immediate action is necessary to prevent possible loss of life and property that is potentially associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Sault Sainte Marie has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of fireworks displays in conjunction with the Friends of Fireworks Celebration fireworks displays. The fireworks displays will occur between 9 p.m. and 11 p.m. on July 11, July 18, July 25, August 1, August 8, August 15, August 22, August 29, and September 5, 2009. If a fireworks display is cancelled due to inclement weather, then the fireworks display will occur between 9 p.m. and 11 p.m. on the following day (July 12, July 19, July 26, August 2, August 9, August 16, August 23, August 30, or September 6, 2009).

The safety zone for the fireworks will encompass all waters of Lake Huron within a 1,000-foot radius from the fireworks launch site in East Moran Bay, with its center in position: 45°52′43″ N, 084°43′69″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

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

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of Lake Huron off St. Ignace, Michigan between 9 p.m. and 11 p.m. on July 11, July 18, July 25, August 1, August 8, August 15, August 22, August 29, and September 5, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only two hours for each event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Sainte Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, because it involves the establishment of a temporary safety zone.

A final environmental analysis check list and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new temporary § 165.T09–0649 as follows:

§ 165.T09–0649 Safety Zone; Friends of Fireworks Celebration, Lake Huron, St. Ignace, MI.

(a) *Location.* The following area is a temporary safety zone: all waters of Lake Huron within a 1,000-foot radius from the Fireworks launch site in East Moran Bay, with its center in position: 45°52′43″ N, 84°43′69″ W. (NAD 83).

(b) *Effective period.* This rule is effective from 9 p.m. on July 11, 2009 until 11 p.m. on September 5, 2009. This rule will be enforced from 9 p.m. to 11 p.m. on July 11, July 18, July 25, August 1, August 8, August 15, August 22, August 29, and September 5, 2009. If a fireworks are cancelled due to inclement weather, then this rule will be enforced from 9 p.m. to 11 p.m. on the following day (July 12, July 19, July 26, August 2, August 9, August 16, August 23, August 30, or September 6, 2009).

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

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

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

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Sault Sainte Marie or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Sault Sainte Marie or his on-scene representative.

Dated: July 8, 2009.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. E9–17245 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0513]

RIN 1625–AA00

Safety Zone; Access Destinations Fireworks Display, San Diego Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of San Diego Bay in support of the Access Destinations Fireworks. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 1 p.m. to 11 p.m. on July 30, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0513 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0513 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego; telephone 619–278–7262, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the logistical arrangements of the fireworks show were neither finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM, and any delay in the effective date of this rule would expose members of the public to the dangers associated with fireworks displays.

For the same reasons, the Coast Guard also finds under 5 U.S.C. 553(d)(3) that good cause exists for making this rule

effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Access Destinations is sponsoring the Access Destinations Fireworks, which will include a fireworks presentation originating from the flight deck of the U.S.S. Midway in San Diego Bay. The safety zone will encompass all navigable waters within 250 feet of any point of the U.S.S. Midway, which will be located at approximately 32°42′52″ N, 117°10′35″ W.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 8 p.m. to 10 p.m. on July 30, 2009. The safety zone is necessary to provide for the safety of the crew, spectators, other members of the public, and vessels on the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The limits of the safety zone encompass all navigable waters within 250 feet of any point of the U.S.S. Midway, which will be located at approximately 32°42′52″ N, 117°10′35″ W.

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the size, location, and short duration of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the San Diego Bay from 8:00 p.m. to 10 p.m. on July 30, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced only two hours in the evening when vessel traffic is low. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the temporary safety zone is enforced.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone for a marine event.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–213 to read as follows:

§ 165.T11–213 Safety Zone; Access Destinations Fireworks; San Diego Bay, CA.

(a) *Location.* The following area is a safety zone: All waters, from surface to bottom, within 250 feet of any point on the U.S.S. Midway, located at approximately 32°42′52″ N, 117°10′35″ W.

(b) *Enforcement period.* This section will be enforced from 8 p.m. to 10 p.m. on July 30, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative,* means any commissioned, warrant, or petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local, state, or federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Communications Center (COMCEN). The COMCEN may be contacted via VHF–FM channel 16 or (619) 278–7033.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

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

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: July 6, 2009.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–17247 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–15–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 2009–05; FTR Case 2009–305; Docket Number 2009–0001, Sequence 5]

RIN 3090–AI93

Federal Travel Regulation (FTR); FTR Case 2009–305; Travel Purpose Identifier

AGENCY: Office of Governmentwide Policy (MTT), GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the provisions of the Federal Travel Regulation (FTR) that pertain to the use of the travel purpose identifiers. This final rule updates the list of travel purpose identifiers and incorporates new descriptive language for each identifier to enhance how travel costs are indentified by Federal agencies.

DATES: *Effective Date:* This final rule is effective August 20, 2009.

Applicability Date: This final rule is applicable to travel performed on, or after August 20, 2009.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4744, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Rick Miller, Office of Travel, Transportation and Asset Management (MT), General Services Administration at (202) 501–3822 or e-mail at *Rodney.Miller@gsa.gov.* Please cite FTR Amendment 2009–05; FTR Case 2009–305.

SUPPLEMENTARY INFORMATION: The Federal Government began using travel purpose identifiers in the mid-1970s as a result of Congressional interest in the types of travel funded by the Government. Travel purpose identifiers categorize the various types of travel that occur in support of an agency's mission and help classify associated costs for that mission.

The travel purpose identifiers used today and listed in Appendix C to Chapter 301 of FTR are as follows: (1) Site Visit, (2) Information Meeting, (3) Training Attendance, (4) Speech or Presentation, (5) Conference Attendance, (6) Relocation, and (7) Entitlement Travel. As the Government's missions have changed over time, it has become questionable as to whether or not the current identifiers adequately capture the complexity of modern Federal travel.

Consequently, GSA and several other agencies established a Travel Purpose Identifier Focus Group to:

- Review the current identifiers;
- Recommend what, if any, changes should be made;
- Develop one common list of identifiers with the flexibility to accommodate agency-specific sub-identifiers; and
- Provide definitions for the new identifiers.

During the review, the focus group evaluated the current identifiers and discussed current travel processes to include: Trends and changes that have occurred since the travel purpose identifiers were last updated in 1998, how funding is appropriated, what is still relevant, and what new processes need to be evaluated and/or implemented to improve the travel purpose identification process. Two key points seemed evident, namely that ''Employee Emergency'' and ''Mission'' travel should be addressed and each identifier should be better defined and categorized.

The focus group deliberations concluded that the current travel purpose identifiers did not adequately define the types of travel that regularly occur today. Thus, the group recommended six new travel purpose identifiers for use within the Federal community. Adoption of the recommended identifiers would:

- Standardize identifiers across the Government;
- Provide the ability to report travel spending by purpose;
- Permit the highlighting of special travel requirements in agency budgets and missions;
- Allow agencies to develop mission-specific sub-identifiers; and
- Provide a greater opportunity to develop standardized reports Governmentwide.

The new travel purpose identifiers are as follows: (1) Employee Emergency, (2) Mission (Operational), (3) Special Agency Mission, (4) Conference—Other Than Training, (5) Training, and (6) Relocation.

B. Executive Order 12866

This final rule is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment, and therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that requires the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates to agency management and personnel.

List of Subjects in 41 CFR Appendix C to Chapter 301

Standard Data Elements for Federal Travel (Traveler Identification)

Dated: May 8, 2009.

Paul F. Prouty,

Acting Administrator.

■ For the reasons set forth in the preamble and pursuant to 5 U.S.C. 5701–5709, 41 CFR Appendix C to Chapter 301 is amended to read as follows:

CHAPTER 301—[AMENDED]

■ Amend Appendix C to Chapter 301, in the table named ''Traveler Identification'' by revising the entries ''Travel Purpose Identifier'' and ''Payment Method'' to read as follows:

Appendix C to Chapter 301—Standard Data Elements for Federal Travel [Travel Identification]

Group name	Data elements	Description
*	*	* * * * *
Travel Purpose Identifier.	Employee Emergency	Travel related to an unexpected occurrence/event or injury/illness that affects the employee personally and/or directly that requires immediate action/attention. *Examples:* Traveler is incapacitated by illness or injury, death or serious illness of a family member (as defined in § 300–3.1 or § 301–30.2), or catastrophic occurrence or impending disaster that directly affects the employee's home. Emergency travel also includes travel for medical care while employee is TDY away from the official duty station (Part 301–30), death of an employee/immediate family member when performing official duties away from the official duty station or home of record (Part 303–70), medical attendant transportation (Part 301–30), assistance travel for an employee with special needs (Part 301–13), as well as travel for threatened law enforcement/investigative employees (Part 301–31).
	Mission (Operational) ..	Travel to a particular site in order to perform operational or managerial activities. Travel to attend a meeting to discuss general agency operations, review status reports, or discuss topics of general interest. *Examples:* Employee's day-to-day operational or managerial activities, as defined by the agency, to include, but not be limited to: hearings, site visit, information meeting, inspections, audits, investigations, and examinations.
	Special Agency Mission.	Travel to carry out a special agency mission and/or perform a task outside the agency's normal course of day-to-day business activities that is unique or distinctive. These special missions are defined by the head of agency and are normally not programmed in the agency annual funding authorization. *Examples:* These agency-defined special missions may include details, security missions, and agency emergency response/recovery such as civil, natural disasters, evacuation, catastrophic events, technical assistance, evaluations or assessments.
	Conference—Other Than Training.	Travel performed in connection with a prearranged meeting, retreat, convention, seminar, or symposium for consultation or exchange of information or discussion. Agencies have to distinguish between conference and training attendance and use the appropriate identifier (see Training below). *Examples:* To participate in a planned program as a speaker/panelist or other form of presentation, host, planner, or others designated to oversee the conference or attendance with no formal role, or as an exhibitor.

Group name	Data elements	Description
	Training	Travel in conjunction with educational activities to become proficient or qualified in one or more areas of responsibility. 5 USC 4101(4) states that "'training' means the process of providing for and making available to an employee, and placing or enrolling the employee in a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals.'' The term ''conference'' may also apply to training activities that are considered to be conferences under 5 CFR 410.404, which states that ''agencies may sponsor an employee's attendance at a conference as a developmental assignment under section 4110 of title 5, United States Code, when: (a) The announced purpose of the conference is educational or instructional; (b) More than half of the time is scheduled for a planned, organized exchange of information between presenters and audience which meets the definition of training in section 4101 of title 5, United States Code; (c) The content of the conference is germane to improving individual and/or organizational performance, and (d) Development benefits will be derived through the employee's attendance.'' Agencies have to distinguish between conference and training attendance and use the appropriate identifier (see Conference—Other Than Training above). *Examples:* Job required training, Internships, Intergovernmental Personnel Act, and forums.
	Relocation	Travel performed in connection with a transfer from one official duty station to another for employees/immediate family members, as applicable. *Examples:* Permanent change of station (PCS) moves for domestic and international transferees/new appointees, tour renewal, temporary change of station (TCS), and last move home.
*	* * * * * * *	
Payment Method	EFT	Direct deposit via electronic funds transfer.
	Treasury Check	Payment made by Treasury check.
	Imprest Fund	Payment made by Imprest Fund.
*	* * * * * * *	

[FR Doc. E9–17128 Filed 7–20–09; 8:45 am]
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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8083]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This

prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

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

§ 64.6 [Amended].

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Virginia:				
Charlotte County, Unincorporated Areas	510333	November 26, 1996, Emerg; November 1, 1997, Reg; July 20, 2009, Susp.	July 20, 2009	July 20, 2009.
Drakes Branch, Town of, Charlotte County.	510032	October 18, 1974, Emerg; June 11, 1982, Reg; July 20, 2009, Susp.	.....*do	Do.
King William County, Unincorporated Areas.	510304	May 22, 1975, Emerg; February 6, 1991, Reg; July 20, 2009, Susp.	.....do	Do.
Lunenburg County, Unincorporated Areas.	510309	October 5, 1978, Emerg; February 25, 1983, Reg; July 20, 2009, Susp.	.....do	Do.
Phenix, Town of, Charlotte County	510302	July 8, 1975, Emerg; February 25, 1983, Reg; July 20, 2009, Susp.	.....do	Do.
West Point, Town of, King William County.	510083	April 16, 1975, Emerg; June 18, 1990, Reg; July 20, 2009, Susp.	.....do	Do.
Region IV				
North Carolina:				
Gates County, Unincorporated Areas ...	370103	March 4, 1976, Emerg; July 16, 1991, Reg; July 20, 2009, Susp.	.....do	Do.
Gatesville, Town of, Gates County	370104	July 8, 1975, Emerg; May 13, 1977, Reg; July 20, 2009, Susp.	.....do	Do.
Region V				
Ohio:				
Akron, City of, Summit County	390523	February 18, 1975, Emerg; February 18, 1981, Reg; July 20, 2009, Susp.	.....do	Do.
Barberton, City of, Summit County	390524	September 13, 1974, Emerg; January 16, 1981, Reg; July 20, 2009, Susp.	.....do	Do.
Boston Heights, Village of, Summit County.	390749	November 16, 1976, Emerg; February 18, 1981, Reg; July 20, 2009, Susp.	.....do	Do.
Clinton, Village of, Summit County	390525	June 9, 1975, Emerg; July 2, 1980, Reg; July 20, 2009, Susp.	.....do	Do.
Cuyahoga Falls, City of, Summit County.	390526	February 27, 1975, Emerg; February 18, 1981, Reg; July 20, 2009, Susp.	.....do	Do.
Fairlawn, City of, Summit County	390657	December 29, 1975, Emerg; January 16, 1981, Reg; July 20, 2009, Susp.	.....do	Do.
Green, City of, Summit County	390927	NA, Emerg; May 29, 2002, Reg; July 20, 2009, Susp.	.....do	Do.
Hudson, City of, Summit County	390660	May 19, 1975, Emerg; September 30, 1980, Reg; July 20, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Lakemore, Village of, Summit County ...	390527	August 8, 1975, Emerg; May 25, 1978, Reg; July 20, 2009, Susp.	.....do	Do.
Macedonia, City of, Summit County	390750	November 11, 1976, Emerg; February 4, 1981, Reg; July 20, 2009, Susp.	.....do	Do.
Mogadore, Village of, Summit County ..	390528	June 11, 1975, Emerg; September 3, 1979, Reg; July 20, 2009, Susp.	.....do	Do.
Munroe Falls, City of, Summit County ..	390843	October 26, 1988, Emerg; May 16, 1994, Reg; July 20, 2009, Susp.	.....do	Do.
Norton, City of, Summit County	390529	July 2, 1975, Emerg; January 16, 1981, Reg; July 20, 2009, Susp.	.....do	Do.
Peninsula, Village of, Summit County ...	390530	June 25, 1975, Emerg; March 2, 1979, Reg; July 20, 2009, Susp.	.....do	Do.
Reminderville, Village of, Summit County.	390855	July 9, 1980, Emerg; May 17, 1990, Reg; July 20, 2009, Susp.	.....do	Do.
Stow, City of, Summit County	390532	November 12, 1973, Emerg; July 17, 1978, Reg; July 20, 2009, Susp.	.....do	Do.
Summit County, Unincorporated Areas	390781	November 21, 1975, Emerg; April 15, 1981, Reg; July 20, 2009, Susp.	.....do	Do.
Twinsburg, City of, Summit County	390534	September 18, 1973, Emerg; February 4, 1981, Reg; July 20, 2009, Susp.	.....do	Do.
Wisconsin:				
Amherst, Village of, Portage County	550338	April 2, 1975, Emerg; January 17, 1991, Reg; July 20, 2009, Susp.	.....do	Do.
Nelsonville, Village of, Portage County	550339	July 1, 1975, Emerg; September 1, 1986, Reg; July 20, 2009, Susp.	.....do	Do.
Plover, Village of, Portage County	550340	April 23, 1974, Emerg; March 1, 1984, Reg; July 20, 2009, Susp.	.....do	Do.
Portage County, Unincorporated Areas	550572	February 10, 1975, Emerg; June 1, 1983, Reg; July 20, 2009, Susp.	.....do	Do.
Rosholt, Village of, Portage County	550341	June 24, 1975, Emerg; September 1, 1988, Reg; July 20, 2009, Susp.	.....do	Do.
Stevens Point, City of, Portage County	550342	August 2, 1974, Emerg; June 1, 1983, Reg; July 20, 2009, Susp.	.....do	Do.
Whiting, Village of, Portage County	550607	February 15, 1984, Emerg; February 15, 1984, Reg; July 20, 2009, Susp.	.....do	Do.
Region VI				
Oklahoma:				
Cache, Town of, Comanche County	400048	March 10, 1975, Emerg; March 18, 1987, Reg; July 20, 2009, Susp.	.....do	Do.
Faxon, Town of, Comanche County	400522	NA , Emerg; June 20, 2008, Reg; July 20, 2009, Susp.	.....do	Do.
Indiahoma, Town of, Comanche County	400287	June 24, 1977, Emerg; April 15, 1982, Reg; July 20, 2009, Susp.	.....do	Do.
Lawton, City of, Comanche County	400049	November 15, 1973, Emerg; December 1, 1978, Reg; July 20, 2009, Susp.	.....do	Do.
Sterling, Town of, Comanche County ...	400414	February 19, 1976, Emerg; July 5, 1978, Reg; July 20, 2009, Susp.	.....do	Do.
Region VIII				
South Dakota:				
Corona, Town of, Roberts County	460071	September 25, 1975, Emerg; March 4, 1987, Reg; July 20, 2009, Susp.	.....do	Do.
Roberts County, Unincorporated Areas	460286	February 21, 1980, Emerg; October 1, 1986, Reg; July 20, 2009, Susp.	.....do	Do.
Sisseton, City of, Roberts County	460072	May 14, 1975, Emerg; May 1, 1986, Reg; July 20, 2009, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp—Suspension.

Dated: July 7, 2009.

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate.

[FR Doc. E9–17211 Filed 7–20–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[Docket No. USCG–2008–1126]

RIN 1625–AB29

2009 Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is increasing the rates for pilotage service on the Great Lakes by an average of 10.77% over the rates that took effect February 4, 2009. This increase reflects an August 1, 2009, increase in benchmark contractual wages and benefits, as well as an increase in the ratio of pilots to ''bridge hours.'' The Coast Guard intends the final rule to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment. The final rule promotes the Coast Guard strategic goal of maritime safety.

DATES: This final rule is effective August 1, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–1126 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, please call Mr. Paul Wasserman, Chief, Great Lakes Pilotage Branch, Commandant (CG–54122), U.S. Coast Guard, at 202–372–1535, by fax 202–372–1929, or e-mail *Paul.M.Wasserman@uscg.mil.* For questions on viewing or submitting material to the docket, call Renee V. Wright, Chief, Dockets, Department of Transportation, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

AMOU American Maritime Officer Union
GLPAC Great Lakes Pilotage Advisory Committee
MISLE Coast Guard Marine Inspection, Safety, and Law Enforcement system
MOA Memorandum of Agreement
NAICS North American Industry Classification System
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget

II. Effective Date

This final rule takes effect August 1, 2009. Under 5 U.S.C. 553(d), we find good cause for this final rule to take effect less than 30 days after publication. The Great Lakes Pilotage Act of 1960, as amended by Public Law 109–241, section 302, requires the Coast Guard to review and adjust the Great Lakes pilotage rates annually by March 1. We could not issue this final rule until some months after that date due to the time needed to review and resolve comments received on the proposed rule. We nonetheless need to issue the final rule before the August 1, 2009, increase in benchmark contractual wages and benefits that necessitates this year's rate adjustment. Under these circumstances, publication of the final rule 30 days or more in advance of the August 1 benchmark increase is impracticable. The regulated community well understands the significance of the August benchmark increase and anticipates that the final rule will take effect not later than August 1. Therefore, we find that delay of the final rule's effective date beyond August 1, 2009, would be unnecessary, and contrary to the public interest in timely rate increases.

III. Background

We published a notice of proposed rulemaking on April 24, 2009 (NPRM, 74 FR 18669). The NPRM proposed an average 9.41% increase.

This rulemaking increases Great Lakes pilotage rates in accord with the methodology contained in Coast Guard regulations in 46 CFR Parts 401–404. Our regulations implement the Great Lakes Pilotage Act of 1960, 46 U.S.C. Chapter 93, which requires foreign-flag vessels engaged in foreign trade to use Federally registered Great Lakes pilots while transiting the St. Lawrence Seaway and the Great Lakes system, and which requires the Secretary of Homeland Security to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' 46 U.S.C. 9303(f).

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage Districts. Pilotage in each District is provided by an association certified by the Coast Guard Director of Great Lakes Pilotage to operate a pilotage pool. It is important to note that, while we set rates, we do not control the actual number of pilots an association maintains, so long as the association is able to provide safe, efficient, and reliable pilotage service, nor do we control the actual compensation that pilots receive. This is determined by each of the three District associations, which use different compensation practices.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks, and Lakes Michigan, Huron, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian Great Lakes Pilotage Authority and, accordingly, is not included in the U.S. rate structure. Areas 1, 5, and 7 have been designated by Presidential Proclamation, pursuant to the Great Lakes Pilotage Act of 1960, to be waters in which pilots must at all times be fully engaged in the navigation of vessels in their charge. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. Under the Great Lakes Pilotage Act of 1960, pilots assigned to vessels in these areas are only required to ''be on board and available to direct the navigation of

the vessel at the discretion of and subject to the customary authority of the master.'' 46 U.S.C. 9302(a)(1)(B).

Our pilotage regulations require annual reviews of pilotage rates and the setting of new rates at least once every five years, or sooner, if annual reviews show a need. 46 CFR 404.1. To assist in calculating pilotage rates, the pilotage associations are required to submit annual financial statements prepared by certified public accounting firms. In addition, every fifth year, in connection with the mandatory rate adjustment, we contract with an independent accounting firm to conduct a full audit of the accounts and records of the pilotage associations and prepare and submit financial reports relevant to the ratemaking process. In those years when a full ratemaking is conducted, we generate the pilotage rates using Appendix A to 46 CFR Part 404. The last Appendix A review was concluded in 2006 (71 FR 16501, Apr. 3, 2006). Between the five-year full ratemaking intervals, we annually review the pilotage rates using Appendix C to Part 404, and adjust rates when deemed appropriate. We conducted Appendix C reviews in 2007 and 2008, and increased rates in both years. The 2008 final rule was published January 5, 2009 (74 FR 220), and took effect on February 4, 2009. We define the terms and formulas used in Appendix A and Appendix C in Appendix B to Part 404.

This final rule concludes the annual Appendix C rate review for 2009, and increases rates by an average of 10.77% over the rates that took effect February 4, 2009.

IV. Discussion of Comments

We received four comments during the NPRM public comment period.

Timeliness. Three commenters, including a pilots' association, pointed out that 46 U.S.C. 9303(f), as amended by Public Law 109–241, sec. 302, requires us to review and, if necessary, establish adjusted pilotage rates by March 1 of each year, in order to provide critical information before the start of the annual Great Lakes shipping season, usually in early spring. These commenters point out that we have not met the March 1, 2009, deadline for this year's review. We acknowledge this and future compliance is a Coast Guard priority. In 2007 and 2008, we mitigated the impact of delay by ensuring that interim rules were in place at the opening of the shipping season. In letters dated April 24, 2007, and March 3, 2008, the pilots' associations expressed their appreciation to the Coast Guard for these efforts. In 2009, publishing a rule at the beginning of the shipping season was not possible, but we hope to mitigate the impact of delay by issuing the final rule so that it takes effect on August 1, 2009, when the benchmark contract increase that accounts for a meaningful portion of this year's rate adjustment takes effect.

''Pilots needed'' and rounding. One commenter said that, in calculating the number of pilots needed in each Area, we should always round the result of our mathematical calculations up to the nearest ''whole pilot,'' and another commenter criticized the imprecision of the language we used in the NPRM to describe our rounding. We agree with this latter comment and have revised our language in this final rule.

We acknowledge that in recent years we have usually rounded the results of the mathematical calculation used to determine the number of ''pilots needed,'' pursuant to our discretionary authority ''to make adjustments to these numbers to ensure uninterrupted pilotage service in each area, or for other reasonable circumstances.'' 46 CFR Part 404, Appendix A, Step 2.B (also applicable in Appendix C calculations). This rounding has never been performed as a matter of policy, nor do we adopt it as policy now. In fact, our current ratemaking methodology requires no rounding whatsoever, and until 2006, what rounding we applied was merely up or down to the nearest tenth of a whole number: *see, e.g.,* our December 12, 2003 (68 FR 69564) and March 10, 2005 (70 FR 12082) interim rules.

In the April 3, 2006 final rule (71 FR 16501), we acknowledged nine public comments in favor of rounding to whole numbers and approved the use of that process for that rule. However, we did not actually apply that methodology in the 2006 final rule. The mathematical result of our 2006 calculations was a whole number in each of the seven Areas, because we rounded the bridge hour projections (not pilot numbers) that year.

In the 2007 interim rule (72 FR 8115, Feb. 23, 2007), we agreed with a public commenter that the rounding of bridge hour projections in 2006 was a departure from past practice and agreed to use unrounded bridge hour projections. We also rounded the mathematical results of our pilots-needed calculations up to the next whole number in all six Areas where rounding was needed. These calculations were unchanged in the 2007 final rule (72 FR 53158, Sep. 18, 2007).

In 2008, the March 21, 2008 interim rule (73 FR 15092) adopted without change the calculations proposed in the February 1, 2008 NPRM (73 FR 6085). Mathematical results of pilots-needed calculations were rounded up in all six Areas where rounding was needed. However, we introduced three adjustments in the 2008 final rule (74 FR 220, Jan. 5, 2009). These adjustments responded to public comments that pointed out that the NPRM and interim rule overstated the bridge hour projections for Areas 2, 4, and 5.

The first adjustment reduced projected bridge hours in Area 2 from 7,993 to 5,650, but kept the ''pilots needed'' for Area 2 at five, one more than would have been indicated by rounding up the mathematical result (5,650/1,800 = 3.14, rounded up = 4). We exercised our discretion to do so because ''experience has demonstrated the need for at least five pilots in that Area,'' a need that we discussed in detail in the final rule at 74 FR 221.

Second, in Area 4, we reduced projected bridge hours from 8,490 to 7,320, and rounded the mathematical result (7,320/1,800 = 4.07) down to four pilots needed. Third, in Area 5, we reduced projected bridge hours from 6,395 to 5,097, and rounded the mathematical result (5,097/1,000 = 5.10) up to six pilots. We exercised our discretion in these two Areas ''because the District 2 Pilots' Association has routinely operated with an average of one less pilot than is authorized under the rate and for the last season and a half with two fewer pilots than authorized. Accordingly, a reduction of one pilot per Area reflects actual practice.'' 74 FR at 222. We might also have observed that pilots in one Area frequently operate in other Areas as well, that District Two comprises both Areas 4 and 5, and that the minimal downward adjustment from 4.07 to 4 in Area 4 should therefore be balanced against the more substantial rounding up, from 5.10 to 6, in Area 5.

We acknowledge that the determination of pilots needed is an issue of concern to many, and that some might wish to see the formula for that determination modified to require ''rounding up'' in all instances. We observe that the ratemaking formula was never designed to produce anything more than a useful model for subsequent calculations. It could be argued that the model worked best without rounding, or with only limited rounding, for example because rounding up inflates pilot numbers and makes it less likely that pilots will be able to reach their target compensation. We defer consideration of such arguments until they can be made and considered in the context of an overall review of our ratemaking methodology. Until

then, we intend to apply the pilots-needed calculations much as we have done since 2007.

Data for bridge hour projections. One commenter said we failed to consult industry in projecting 2009 vessel traffic, and that our bridge hour projections for 2009 (*i.e.,* the projection of hours pilots are aboard vessels providing pilotage service) should have been based on 2008 figures rather than on 2007 figures. To meet the statutory deadline for establishing rates by March 1, 2009, we began preparing the 2009 NPRM long before actual data for 2008 was available. Although our practice has not been to document every contact with industry or pilots, our regulations and our ratemaking methodology presuppose frequent informal contacts between the Director of Great Lakes Pilotage, industry, and pilots. The information received through those contacts is submitted for public comment in our NPRM. In this case, our use of 2007 figures for 2009, instead of waiting for 2008 figures, was based on 2008 informal discussions with pilot and industry representatives that endorsed the continued use of 2007 figures, with some modifications. Those modifications were explained in the April 2009 NPRM.

We agree with one commenter who said that the NPRM did not adequately explain the difference in Area 6 and Area 7 base period bridge hours (18,000 and 3,863, respectively), and the 2009 projected bridge hours for those Areas (13,406 and 3,259, respectively). Areas 6 and 7 experienced a significant decrease in 2007 actual bridge hours, from 2007 projections. Therefore, the 2009 projections for those Areas reflects their actual 2007 bridge hours, and then further reduces those figures by an additional 10% in each Area.

One commenter said we should adjust Area 1 projected bridge hours to more accurately reflect anticipated traffic for the 2009 shipping season, as we did for areas 2, 4, and 5 in the 2008 final rule and as we proposed for District Three in the 2009 NPRM. We agree and, in this final rule, we are reducing the projected bridge hours for Area 1 from 5661 to 5203. We are also adjusting District Three bridge hours as indicated in the NPRM.

Class 4 vessels. One commenter said that our pilotage rates for Class 4 vessels are 15% higher than Canadian rates. This may be true, but in the past year the difference has been less than 1%, but has varied subsequently due to fluctuations in the relative value of U.S. and Canadian currency.

Miscellaneous. Three commenters took issue with various aspects of our ratemaking methodology. These comments are beyond the scope of this rulemaking, which applies the methodology as it exists today, but we address two points briefly here. One commenter petitioned the Coast Guard to review our formula for setting benchmark compensation levels of Great Lakes vessel masters. We deny that petition because we have previously conducted the requested review and believe the formula is correct: a supporting memorandum appears in the docket for this rulemaking as USCG–2008–1126–0017. The same commenter criticized us for not yet adopting the recommendations of Rear Admiral Timothy J. Riker's 2003 report on Great Lakes bridge hours. We decline to adopt the Riker Report recommendations in full because we do not think the Report adequately accounted for the difference between a Great Lakes pilot's active, on call, work life during a portion of the year and the work life of an office-based 40 hour per week worker through a 52-week year.

We acknowledge that through the years, both pilots and industry have indicated concerns about aspects of our ratemaking methodology. Some of those concerns are described in communications that we received between January 2009, when we published the 2008 final rule, and April 2009, when we published the 2009 NPRM. Those communications appear in the docket for this rulemaking as supplemental material. To obtain a more comprehensive understanding of these concerns, we have decided to publish a notice focusing on our ratemaking methodology, and requesting public comments. That notice appears elsewhere in today's **Federal Register**. We will refer the comments we receive to the Great Lakes Pilotage Advisory Committee, which Congress established to advise the Coast Guard on significant policy decisions relating to Great Lakes pilotage.

V. Discussion of the Final Rule

A. Summary

We are increasing pilotage rates in accordance with the methodology outlined in Appendix C to 46 CFR Part 404, by increasing rates an average 10.77% over the 2008 final rule. This final rule puts into place, with two modifications, the rate changes we proposed in the April 24, 2009 NPRM. The first modification adjusts projected bridge hours in Area 1 as discussed in part IV of this preamble. The second modification updates the ship tonnage percentages under the AMO union contracts. This second modification accounts for only 0.36% of the overall rate increase.

TABLE 1—2009 AREA RATE CHANGES

If pilotage service is required in:	Then the proposed percentage increases over the current rate is:
Area 1 (designated waters)	13.43
Area 2 (undesignated waters)	4.79
Area 4 (undesignated waters)	4.90
Area 5 (designated waters)	4.48
Area 6 (undesignated waters)	12.52
Area 7 (designated waters)	23.64
Area 8 (undesignated waters)	2.52
Overall rate change (percentage change in overall prospective unit costs/base unit costs; *see* Table 18)	10.77

Rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420), and basic rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (46 CFR 401.428), have been increased by 10.77% in all Areas.

B. Calculating the Rate Adjustment

The Appendix C ratemaking calculation involves eight steps:

Step 1: Calculate the total economic costs for the base period (*i.e.*, pilot

compensation expense plus all other recognized expenses plus the return element) and divide by the total bridge hours used in setting the base period rates;

Step 2: Calculate the ''expense multiplier,'' the ratio of other expenses and the return element to pilot compensation for the base period;

Step 3: Calculate an annual ''projection of target pilot compensation'' using the same procedures found in Step 2 of Appendix A;

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2;

Step 5: Adjust the result in Step 4, as required, for inflation or deflation;

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs;

Step 7: Divide prospective unit costs in Step 6 by the base period unit costs in Step 1; and

Step 8: Adjust the base period rates by the percentage changes in unit cost in Step 7.

The base data used to calculate each of the eight steps comes from the 2008 final rule, published in January 2009. We also used the most recent union contracts between the American Maritime Officers Union (AMOU) and vessel owners and operators on the Great Lakes, which we received on August 16, 2007, to determine target pilot compensation. Bridge hour projections for the 2009 season have been obtained from historical data, pilots, and industry. All documents and records used in this rate calculation have been placed in the public docket for this rulemaking and are available for review at the addresses listed under **ADDRESSES**.

Some values may not total exactly due to format rounding for presentation in charts and explanations in this section. The rounding does not affect the integrity or truncate the real value of the calculations in the ratemaking methodology described below.

Step 1: Calculate the total economic cost for the base period. The calculations in Step 1 are unchanged from the NPRM, but are repeated for your convenience.

In this step, for each Area, we divide total economic costs for the base period by the total bridge hours used in setting the base period rates, to yield the base cost per bridge hour. Total base period economic costs include pilot compensation expenses, plus all other recognized expenses, plus the return element. The calculations providing the total base period economic costs for each Area are summarized in Table 16 of the 2008 final rule. Total bridge hours used in setting the base period rates were calculated in Table 13 of the 2008 final rule. Tables 2 through 4 summarize the Step 1 calculations:

TABLE 2—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Total base period economic costs	$2,078,551	$1,474,806	$3,553,357
Base bridge hours	÷ 5,661	÷ 5,650	÷ 11,311
Base cost per bridge hour	= $367.17	= $261.03	= $314.15

TABLE 3—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Total base period economic costs	$1,251,203	$2,334,169	$3,585,372
Base bridge hours	÷ 7,320	÷ 5,097	÷ 12,417
Base cost per bridge hour	= $170.93	= $457.95	= $288.75

TABLE 4—TOTAL ECONOMIC COST FOR BASE PERIOD, DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Total base period economic costs	$2,884,724	$1,427,515	$1,944,032	$6,256,273
Base bridge hours	÷ 18,000	÷ 3,863	÷ 11,390	÷ 33,253
Base cost per bridge hour	= $160.26	= $369.54	= $170.68	= $188.14

Step 2. Calculate the expense multiplier. The calculations in Step 2 are unchanged from the NPRM, but are repeated for your convenience.

In this step, for each Area, we calculate an expense multiplier by dividing the base operating expense, shown in Table 16, Column B of the 2008 final rule, by base pilot compensation, shown in Table 16, Column C of the 2008 final rule. Tables 5 through 7 show the Step 2 calculations.

TABLE 5—EXPENSE MULTIPLIER, DISTRICT ONE

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Base operating expense	$516,138	$529,046	$1,045,185

TABLE 5—EXPENSE MULTIPLIER, DISTRICT ONE—Continued

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District One
Base target pilot compensation	÷ $1,562,413	÷ $945,760	÷ $2,508,173
Expense multiplier	= .33035	= .55939	= .41671

TABLE 6—EXPENSE MULTIPLIER, DISTRICT TWO

	Area 4 Lake Erie	Area 5 Southeast Shoal to Port Huron, MI	Total District Two
Base operating expense	$494,595	$771,756	$1,266,351
Base target pilot compensation	÷ $756,608	÷ $1,562,413	÷ $2,319,021
Expense multiplier	= .65370	= .49395	= .54607

TABLE 7—EXPENSE MULTIPLIER, DISTRICT THREE

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District Three
Base operating expense	$993,207	$385,906	$619,968	$1,999,081
Base target pilot compensation	÷ $1,891,520	÷ $1,041,609	÷ $1,324,064	÷ $4,257,193
Expense multiplier	= .52508	= .37049	= .46823	= .46958

Step 3. Calculate annual projection of target pilot compensation. Step 3 calculations have been modified since the NPRM. In this step, we determine the new target rate of compensation and the new number of pilots needed in each pilotage Area, to determine the new target pilot compensation for each Area.

(a) Determine new target rate of compensation. Target pilot compensation is based on the average annual compensation of first mates and masters on U.S. Great Lakes vessels. Compensation includes wages and benefits. For pilots in undesignated waters, we approximate the first mates' compensation and, in designated waters, we approximate the master's compensation (first mates' wages multiplied by 150% plus benefits). To determine first mates' and masters' average annual compensation, we use data from the most recent AMOU contracts with the U.S. companies engaged in Great Lakes shipping. Where different AMOU agreements apply to different companies, we apportion the compensation provided by each agreement according to the percentage of tonnage represented by companies under each agreement.

There are two current AMOU contracts. In our April 2009 NPRM, we stated that vessels operated by the American Steamship Co. and Inland Lakes Management Co. (acquired in 2008 by Mittal Steel USA, Inc.) operate under ''Agreement A,'' and that Key Lakes, Inc. and Mittal Steel USA, Inc. vessels (other than the Inland Lakes vessels acquired by Mittal) operate under ''Agreement B.'' However, as of May 2009, Agreement A applies only to Key Lakes, Inc. vessels, and Agreement B applies to all vessels operated by American Steamship Co. and Mittal Steel USA, Inc.

Both Agreement A and Agreement B provide for a 3% wage increase effective August 1, 2009. Under Agreement A, the daily wage rate will be increased from $255.28 to $262.73. Under Agreement B, the daily wage rate will be increased from $314.42 to $323.86.

To calculate monthly wages, we apply Agreement A and Agreement B monthly multipliers of 54.5 and 49.5, respectively, to the daily rate. Agreement A's 54.5 multiplier represents 30.5 average working days, 15.5 vacation days, 4 days for four weekends, 3 bonus days, and 1.5 holidays. Agreement B's 49.5 multiplier represents 30.5 average working days, 16 vacation days, and 3 bonus days.

To calculate average annual compensation, we multiply monthly figures by 9 months, the length of the Great Lakes shipping season.

Table 8, which is unchanged from the NPRM, shows new wage calculations based on Agreements A and B effective August 1, 2009.

TABLE 8—WAGES

Monthly component	Pilots on undesignated waters	Pilots on designated waters (undesignated × 150%)
Agreement A:		
$262.73 daily rate × 54.5 days	$14,319	$21,478
Agreement A:		
Monthly total × 9 months = total wages	128,870	193,305
Agreement B:		
$323.86 daily rate × 49.5 days	16,031	24,046
Agreement B:		

TABLE 8—WAGES—Continued

Monthly component	Pilots on undesignated waters	Pilots on designated waters (undesignated × 150%)
Monthly total × 9 months = total wages	144,278	216,417

Both Agreements A and B include a health benefits contribution rate of $80.69 effective August 1, 2009. Agreement A includes a pension plan contribution rate of $33.35 per man-day. Agreement B includes a pension plan contribution rate of $43.55 per man-day. Both Agreements A and B provide a 401K employer matching rate, 5% of the wage rate. Neither Agreement A nor Agreement B includes a clerical contribution that appeared in earlier contracts. Per the AMOU, the multiplier used to calculate monthly benefits is 45.5 days.

Table 9, which is unchanged from the NPRM, shows new benefit calculations based on Agreements A and B, effective August 1, 2009.

TABLE 9—BENEFITS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
Employer contribution, 401(K) plan (Monthly Wages × 5%)	$715.95	$1,073.92
Pension = $33.35 × 45.5 days	1,517.43	1,517.43
Health = $80.69 × 45.5 days	3,671.40	3,671.40
Agreement B:		
Employer contribution, 401(K) plan (Monthly Wages × 5%)	801.54	1,202.32
Pension = $43.55 × 45.5 days	1,981.53	1,981.53
Health = $80.69 × 45.5 days	3,671.40	3,671.40
Agreement A:		
Monthly total benefits	= 5,904.77	= 6,262.74
Agreement A:		
Monthly total benefits × 9 months	= 53,143	= 56,365
Agreement B:		
Monthly total benefits	= 6,454.46	= 6,855.24
Agreement B:		
Monthly total benefits × 9 months	= 58,090	= 61,697

Table 10, which is unchanged from the NPRM, totals the wages and benefits under each agreement.

TABLE 10—TOTAL WAGES AND BENEFITS

	Pilots on undesignated waters	Pilots on designated waters
Agreement A: Wages	$128,870	$193,305
Agreement A: Benefits	+ 53,143	+ 56,365
Agreement A: Total	= 182,013	= 249,670
Agreement B: Wages	144,278	216,417
Agreement B: Benefits	+ 58,090	+ 61,697
Agreement B: Total	= 202,368	= 278,114

Table 11, as it appeared in the NPRM, has been revised to reflect the change in the distribution of vessels operating under Agreements A and B as of May 2009. It shows that approximately 30% of U.S. Great Lakes shipping deadweight tonnage operates under Agreement A, with the remaining 70% operating under Agreement B.

TABLE 11—DEADWEIGHT TONNAGE BY AMOU AGREEMENT

Company	Agreement A	Agreement B
American Steamship Company		815,600

TABLE 11—DEADWEIGHT TONNAGE BY AMOU AGREEMENT—Continued

Company	Agreement A	Agreement B
Mittal Steel USA, Inc	.....	38,826
Key Lakes, Inc	361,385	.....
Total tonnage, each agreement	361,385	854,426
Percent tonnage, each agreement	361,385 ÷ 1,215,811 = 29.7238%	854,426 ÷ 1,215,811 = 70.2762%

Table 12, as it appeared in the NPRM, has been modified. It applies the percentage of tonnage represented by each agreement to the wages and benefits provided by each agreement, to determine the projected target rate of compensation on a tonnage-weighted basis.

TABLE 12—PROJECTED TARGET RATE OF COMPENSATION, WEIGHTED

	Undesignated waters	Designated waters
AGREEMENT A:		
Total wages and benefits × percent tonnage	$182,013 × 29.72% = $54,101	$249,670 × 29.72% = $74,211
AGREEMENT B:		
Total wages and benefits × percent tonnage	$202,368 × 70.28% = $142,217	$278,114 × 70.28% = $195,448
Total weighted average wages and benefits = projected target rate of compensation	$54,101 + $142,217 = $196,318	$74,211 + $195,448 = $269,659

(b) Determine number of pilots needed. Subject to discretionary adjustment by the Director of Great Lakes Pilotage to ensure uninterrupted service or for other reasonable circumstances, we determine the number of pilots needed in each Area by dividing each Area's projected bridge hours, either by 1,000 (designated waters) or by 1,800 (undesignated waters). The resulting number is rounded either up or down based upon the needs of commerce at the discretion of the Director.

Bridge hours are the number of hours a pilot is aboard a vessel providing pilotage service. Projected bridge hours are based on the vessel traffic that pilots are expected to serve. Based on historical data and information provided by pilots and industry, the Coast Guard projects the same bridge hours for Areas 2, 4, 5, and 8 in 2009 as were projected in the 2008 final rule. As discussed in Part IV of this preamble, we are reducing projected bridge hours for Areas 1, 6, and 7. With these reductions, we are reducing the number of pilots in Area 6 by two.

Table 13, as it appeared in the NPRM, has been modified to reflect the reductions in Areas 1, 6, and 7 bridge hour projections. Table 13 shows the projected bridge hours needed for each Area, and the total number of pilots needed after dividing those figures either by 1,000 or 1,800 and, for the purposes of this rulemaking only, rounding up to the next whole pilot, with two exceptions. In Area 2 we round up from 3.14 to 5, and in Area 4 we round down from 4.07 to 4, for the reasons discussed in the 2008 final rule.

TABLE 13—NUMBER OF PILOTS NEEDED

Pilotage area	Projected 2009 bridge hours	Divided by 1,000 (designated waters) or 1,800 (undesignated waters)	Pilots needed (total = 40)
Area 1	5,203	1,000	6
Area 2	5,650	1,800	5
Area 4	7,320	1,800	4
Area 5	5,097	1,000	6
Area 6	13,406	1,800	8
Area 7	3,259	1,000	4
Area 8	11,630	1,800	7

(c) Determine the projected target pilot compensation for each Area. We project new total target pilot compensation separately for each pilotage Area, by multiplying the number of pilots needed in each Area (*see* Table 13) by the projected target rate of compensation (*see* Table 12) for pilots working in that Area. Table 14 (modified from NPRM version) shows this calculation.

TABLE 14—PROJECTED TARGET PILOT COMPENSATION

Pilotage Area	Pilots needed (total = 40)	Multiplied by target rate of compensation	Projected target pilot compensation
Area 1	6	× $269,659	$1,617,955
Area 2	5	× 196,318	981,589
Total, District One	11		2,599,544
Area 4	4	× 196,318	785,271
Area 5	6	× 269,659	1,617,955
Total, District Two	10		2,403,226
Area 6	8	× 196,318	1,570,542
Area 7	4	× 269,659	1,078,637
Area 8	7	× 196,318	1,374,224
Total, District Three	19		4,023,403

Step 4: Increase the projected pilot compensation in Step 3 by the expense multiplier in Step 2. Step 4 calculations have been modified since the NPRM. This step yields a projected increase in operating costs necessary to support the increased projected pilot compensation. Table 15 (modified from NPRM version) shows this calculation.

TABLE 15—PROJECTED OPERATING EXPENSE

Pilotage area	Projected target pilot compensation	Multiplied by expense multiplier	Projected operating expense*
Area 1	$1,617,955	× .33035	$534,487
Area 2	981,589	× .55939	549,089
Total, District One	2,599,544	× .41671	1,083,260
Area 4	785,271	× .65370	513,332
Area 5	1,617,955	× .49395	799,192
Total, District Two	2,403,226	× .54607	1,312,333
Area 6	1,570,542	× .52508	824,666
Area 7	1,078,637	× .37049	399,625
Area 8	1,374,224	× .46823	643,454
Total, District Three	4,023,403	× .46958	1,889,298

*Unique expense multipliers are used to calculate projected operating expense for all areas and districts, and as such, projected operating expense for Districts One, Two and Three may not equal the sum of the projected operating expense for the areas.

Step 5: Adjust the result in Step 4, as required, for inflation or deflation, and calculate projected total economic cost. Step 5 calculations have been modified since the NPRM. Based on data from the U.S. Department of Labor's Bureau of Labor Statistics, we have multiplied the results in Step 4 by a 1.027 inflation factor, reflecting an average inflation rate of 2.7% in ''Midwest Economy—Consumer Prices'' between 2006 and 2007, the latest years for which data are available. Table 16 (modified from NPRM version) shows this calculation and the projected total economic cost.

TABLE 16—PROJECTED TOTAL ECONOMIC COST

Pilotage area	A. Projected operating expense	B. Increase, multiplied by inflation factor (= A × 1.027)	C. Projected target pilot compensation	D. Projected total economic cost (= B + C)
Area 1	$534,487	$548,918	$1,617,955	$2,166,873
Area 2	549,089	563,914	981,589	1,545,503
Total, District One	1,083,260	1,112,508	2,599,544	*3,712,052
Area 4	513,332	527,192	785,271	1,312,463
Area 5	799,192	820,770	1,617,955	2,438,725
Total, District Two	1,312,333	1,347,766	2,403,226	*3,750,992
Area 6	824,666	846,932	1,570,542	2,417,474
Area 7	399,625	410,415	1,078,637	1,489,052

TABLE 16—PROJECTED TOTAL ECONOMIC COST—Continued

Pilotage area	A. Projected operating expense	B. Increase, multiplied by inflation factor (= A × 1.027)	C. Projected target pilot compensation	D. Projected total economic cost (= B + C)
Area 8	643,454	660,828	1,374,224	2,035,052
Total, District Three	1,889,298	1,940,310	4,023,403	*5,963,713

*Unique expense multipliers are used to calculate projected operating expense for all areas and districts, and as such, projected total economic cost for Districts One, Two and Three may not equal the sum of the projected total economic cost for the areas.

Step 6: Divide the result in Step 5 by projected bridge hours to determine total unit costs. Step 6 calculations have been modified since the NPRM. Table 17 (modified from NPRM version) shows this calculation.

TABLE 17—TOTAL UNIT COSTS

Pilotage area	A. Projected total economic cost	B. Projected 2009 bridge hours	Prospective (total) unit costs (A divided by B)
Area 1	$2,166,873	5,203	$416.47
Area 2	1,545,503	5,650	273.54
Total, District One	3,712,052	10,853	342.03
Area 4	1,312,463	7,320	179.30
Area 5	2,438,725	5,097	478.46
Total, District Two	3,750,992	12,417	302.09
Area 6	2,417,474	13,406	180.33
Area 7	1,489,052	3,259	456.90
Area 8	2,035,052	11,630	174.98
Total, District Three	5,963,713	28,295	210.77
Overall	13,426,758	51,565	260.39

Step 7: Divide prospective unit costs (total unit costs) in Step 6 by the base period unit costs in Step 1. Step 7 calculations have been modified since the NPRM. Table 18 (modified from NPRM version) shows this calculation, which expresses the percentage change between the total unit costs and the base unit costs. The results, for each Area, are identical with the percentage increases listed in Table 1.

TABLE 18—PERCENTAGE CHANGE, PROSPECTIVE IN UNIT COSTS

Pilotage area	A. Prospective unit costs	B. Base period unit costs	C. Percentage change from base (A divided by B; result expressed as percentage)
Area 1	$416.47	$367.17	13.43
Area 2	273.54	261.03	4.79
Total, District One	342.03	314.15	8.87
Area 4	179.30	170.93	4.90
Area 5	478.46	457.95	4.48
Total, District Two	302.09	288.75	4.62
Area 6	180.33	160.26	12.52
Area 7	456.90	369.54	23.64
Area 8	174.98	170.68	2.52
Total, District Three	210.77	188.14	12.03
Overall	260.39	235.08	10.77

Step 8: Adjust the base period rates by the percentage change in unit costs in Step 7. Step 8 calculations have been modified since the NPRM. Table 19 (modified from NPRM version) shows this calculation.

TABLE 19—BASE PERIOD RATES ADJUSTED BY PERCENTAGE CHANGE IN UNIT COSTS*

Pilotage	A. Base period rate	B. Percentage change in unit costs	C. Increase in base rate (A × B%)	D. Adjusted rate (A + C, rounded to nearest cent)
Area 1	.....	13.43 (1.1343)		
—Basic pilotage	$14.94/km, $26.44/mi	.....	$2.00/km, $3.55/mi	$16.95/km, $29.99/mi
—Each lock transited	331.03	.....	44.44	375.47
—Harbor movage	1,083.89	.....	145.52	1,229.41
—Minimum basic rate, St. Lawrence River	722.98	.....	97.07	820.04
—Maximum rate, through trip	3,173.51	.....	426.07	3,599.58
Area 2	.....	4.79 (1.0479)	.....	.....
—6-hr. period	780.23	.....	37.40	817.63
—Docking or undocking	744.24	.....	35.68	779.92
Area 4	.....	4.90 (1.0490)	.....	.....
—6-hr. period	688.35	.....	33.70	722.05
—Docking or undocking	530.49	.....	25.97	556.46
—Any point on Niagara River below Black Rock Lock	1,354.15	.....	66.30	1,420.45
Area 5 between any point on or in	.....	4.48 (1.0448)	.....	.....
—Toledo or any point on Lake Erie W. of Southeast Shoal	1,243.75	.....	55.71	1,299.46
—Toledo or any point on Lake Erie W. of Southeast Shoal & Southeast Shoal	2,104.72	.....	94.28	2,198.99
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit River	2,732.79	.....	122.41	2,855.20
—Toledo or any point on Lake Erie W. of Southeast Shoal & Detroit Pilot Boat	2,104.72	.....	94.28	2,198.99
—Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	3,665.60	.....	164.20	3,829.80
—Port Huron Change Point & Toledo or any point on Lake Erie W. of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,246.60	.....	190.22	4,436.82
—Port Huron Change Point & Detroit River	2,753.85	.....	123.36	2,877.20
—Port Huron Change Point & Detroit Pilot Boat	2,141.88	.....	95.94	2,237.82
—Port Huron Change Point & St. Clair River	1,522.48	.....	68.20	1,590.68
—St. Clair River	1,243.75	.....	55.71	1,299.46
—St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	3,665.60	.....	164.20	3,829.80
—St. Clair River & Detroit River/Detroit Pilot Boat	2,753.85	.....	123.36	2,877.20
—Detroit, Windsor, or Detroit River	1,243.75	.....	55.71	1,299.46
—Detroit, Windsor, or Detroit River & Southeast Shoal	2,104.72	.....	94.28	2,198.99
—Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie W. of Southeast Shoal	2,732.79	.....	122.41	2,855.20
—Detroit, Windsor, or Detroit River & St. Clair River	2,753.85	.....	123.36	2,877.20
—Detroit Pilot Boat & Southeast Shoal	1,522.48	.....	68.20	1,590.68
—Detroit Pilot Boat & Toledo or any point on Lake Erie W. of Southeast Shoal	2,104.72	.....	94.28	2,198.99
—Detroit Pilot Boat & St. Clair River	2,753.85	.....	123.36	2,877.20
Area 6	.....	12.52 (1.1252)	.....	.....
—6-hr. period	553.62	.....	69.31	622.93
—Docking or undocking	525.88	.....	65.84	591.72
Area 7 between any point on or in	.....	23.64 (1.2364)	.....	.....
—Gros Cap & De Tour	1,975.83	.....	467.15	2,442.98
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour	1,975.83	.....	467.15	2,442.98
—Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & Gros Cap	744.10	.....	175.93	920.03
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour	1,656.11	.....	391.55	2,047.67
—Any point in Sault Ste. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap	744.10	.....	175.93	920.03
—Sault Ste. Marie, MI & De Tour	1,656.11	.....	391.55	2,047.67
—Sault Ste. Marie, MI & Gros Cap	744.10	.....	175.93	920.03
—Harbor movage	744.10	.....	175.93	920.03
Area 8	.....	2.52 (1.0252)	.....	.....
—6-hr. period	535.92	.....	13.51	549.44
—Docking or undocking	509.36	.....	12.84	522.20

Rates for ''Cancellation, delay or interruption in rendering services (§ 401.420)'' and ''Basic Rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (§ 401.428)'' are not reflected in this table but have been increased by 10.77% across all areas.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rulemaking is not significant under Executive Order 12866 and will not be reviewed by OMB.

The Coast Guard is required to conduct an annual review of pilotage rates on the Great Lakes and, if necessary, adjust these rates to align compensation levels between Great Lakes pilots and industry. *See* the ''Background and Purpose'' section for a detailed explanation of the legal authority and requirements for the Coast Guard to conduct an annual review and provide possible adjustments of pilotage rates on the Great Lakes. Based on our annual review for this rulemaking, we are adjusting the pilotage rates for the 2009 shipping season to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment.

This rule will implement a 10.77% overall rate adjustment for the Great Lakes system over the current rate as adjusted in the 2008 final rule. These adjustments to Great Lakes pilotage rates meet the requirements set forth in 46 CFR part 404 for similar compensation levels between Great Lakes pilots and industry. They also include adjustments for inflation and changes in association expenses to maintain these compensation levels.

In general, we expect an increase in pilotage rates for a certain area to result in additional costs for shippers using pilotage services in that area, while a decrease would result in a cost reduction or savings for shippers in that area. This rule will result in a distributional effect that transfers payments (income) from affected shippers (vessel owners and operators) to the Great Lakes' pilot associations through Coast Guard regulated pilotage rates.

The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in the foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. However, the Coast Guard issued a policy position several years ago stating that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this rule, such as recreational boats and vessels only operating within the Great Lakes system, may elect to purchase pilotage services. However, this election is voluntary and does not affect the Coast Guard's calculation of the rate increase and is not a part of our estimated national cost to shippers.

We reviewed a sample of pilot source forms, which are the forms used to record pilotage transactions on vessels, and discovered very few cases of U.S. Great Lakes vessels (*i.e.,* domestic vessels without registry operating only in the Great Lakes) that purchased pilotage services. We assume some vessel owners and operators may also choose to purchase pilotage services if their vessels are carrying hazardous substances or were navigating the Great Lakes system with inexperienced personnel. Based on information from the Coast Guard Office of Great Lakes Pilotage, we have determined that these vessels voluntarily chose to use pilots and, therefore, are exempt from pilotage requirements.

We used 2006–2007 vessel arrival data from the Coast Guard's Marine Inspection, Safety, and Law Enforcement system (MISLE) to estimate the average annual number of vessels affected by the rate adjustment to be 208 vessels that journey into the Great Lakes system. These vessels entered the Great Lakes by transiting through or in part of at least one of the three pilotage Districts before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 208 vessels, there were approximately 923 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2006–2007 vessel data from MISLE.

The impact of the rate adjustment to shippers is estimated from the district pilotage revenues. These revenues represent the direct and indirect costs (''economic costs'') that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated cost of pilotage.

We estimate the additional impact (costs or savings) of the rate adjustment in this final rule to be the difference between the total projected revenue needed to cover costs based on the 2008 rate adjustment and the total projected revenue needed to cover costs in this final rule for 2009. Table 20 details additional costs or savings by area and district.

TABLE 20—RATE ADJUSTMENT AND ADDITIONAL IMPACT OF THE FINAL RULE ($U.S.; NON-DISCOUNTED) [1]

	Total projected expenses in 2008	Proposed rate change	Total projected expenses in 2009 [3]	Additional revenue or cost of this rule-making [2]
Area 1	$2,078,551	1.0425	2,166,873	$88,322
Area 2	1,474,806	1.0479	1,545,503	70,697
Total, District One	3,553,357	1.0447	3,712,052	158,695
Area 4	1,251,203	1.0490	1,312,463	61,260
Area 5	2,334,169	1.0448	2,438,725	104,556
Total, District Two	3,585,372	1.0462	3,750,992	165,620
Area 6	2,884,724	0.8380	2,417,474	(467,250)
Area 7	1,427,515	1.0431	1,489,052	61,537
Area 8	1,944,032	1.0468	2,035,052	91,020

TABLE 20—RATE ADJUSTMENT AND ADDITIONAL IMPACT OF THE FINAL RULE ($U.S.; NON-DISCOUNTED) [1]—Continued

	Total projected expenses in 2008	Proposed rate change	Total projected expenses in 2009 [3]	Additional revenue or cost of this rule-making [2]
Total, District Three	6,256,273	0.9532	5,963,713	(292,560)

[1] Some values may not total due to rounding.
[2] Additional Revenue or Cost of this Rulemaking = 'Total Projected Expenses in 2009' − 'Total Projected Expenses in 2008'.
[3] 'Total Projected Expenses in 2009' and 'Additional Revenue or Cost of this Rulemaking' for Districts One, Two and Three differ from the sum of the area totals due to the use of unique multipliers, as mentioned in Step 5 under 'Calculating the Rate Adjustment'.

After applying the rate change in this rule, the resulting difference between the projected revenue in 2008 and the projected revenue in 2009 is the annual impact to shippers from this rule. This figure will be equivalent to the total additional payments or savings that shippers will incur for pilotage services from this rule. As discussed earlier, we consider a reduction in payments to be a cost savings.

The impact of the rate adjustment in this rule to shippers varies by area and district. The annual costs of the rate adjustments in Districts 1 and 2 are approximately $159,000 and $166,000, respectively, while District 3 will experience an annual savings of approximately $293,000. To calculate an exact cost or savings per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators will pay more and some will pay less depending on the distance and port arrivals of their vessels' trips. However, the annual cost or savings reported above does capture all of the additional cost the shippers face as a result of the rate adjustment in this rule.

As Table 20 indicates, all areas will experience an increased annual cost due to this rulemaking except Area 6, which will experience a savings. The projected savings for Area 6 is approximately $467,000. This will cause a net savings for District 3, and is due to a decrease in actual bridge hours in Area 6 from 2008 to 2009. This decrease in bridge hours led to a decrease in the number of pilots needed, from 10 pilots in 2008 to 8 pilots in 2009. This decrease in the number of pilots would reduce the projected revenue needed to cover costs of pilotage services in Area 6.

The effects of a rate adjustment on costs and savings vary by year and area. A decrease in projected expenses for individual areas or districts is common in past pilotage rate adjustments. Most recently, in the 2008 Final Rule, District 2 experienced a decrease in projected expenses due to an adjustment in bridge hours from the 2008 Interim Rule, which led to a savings for that district. However, this savings was not large enough to outweigh the costs to the other districts.

The overall impact of the final rule will be an additional cost to shippers of $32,000 across all three districts. This differs from the estimated cost savings of $15,000 in the NPRM due to the projected changes in bridge hours in Area 1,[1] as well as the change in the distribution of vessels operating under Agreements A and B as of May 2009. We explained these two differences from the NPRM in our Part IV discussion of public comments on bridge hour projection data, and in our Part V.B discussion of Step 3(b) rate calculations. These two changes since the NPRM resulted in increased projected expenses, accounting for the overall increased cost to shippers of the final rule.

B. Small Entities

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

We expect entities affected by the proposed rule would be classified under the North American Industry Classification System (NAICS) code subsector 483—Water Transportation, which includes one or all of the following 6-digit NAICS codes for freight transportation: 483111—Deep Sea Freight Transportation, 483113—Coastal and Great Lakes Freight Transportation, and 483211—Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

For this rule, we reviewed recent company size and ownership data from 2006–2007 MISLE data and business revenue and size data provided by Reference USA and Dunn and Bradstreet. We were able to gather revenue and size data or link the entities to large shipping conglomerates for 22 of the 24 affected entities in the United States. We found that large, mostly foreign-owned, shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants will be comparable in ownership and size to these shippers.

There are three U.S. entities affected by the rule that receive revenue from pilotage services. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are classified with the same NAICS industry classification and small entity size standards described above, but they have far fewer than 500 employees: approximately 65 total employees combined. We expect no adverse impact to these entities from this rule since all associations receive enough revenue to balance the projected expenses associated with the projected number of bridge hours and pilots.

Therefore, the Coast Guard has determined that this rule will not have a significant economic impact on a substantial number of small entities under 5 U.S.C. 605(b).

C. Assistance for Small Entities

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

[1] When a decrease in traffic is not accompanied by a reduction in pilots, as in this case, projected pilot compensation and other expenses do not decrease. As such, revenue must increase to meet these expenses, which can only be accomplished through rate increases.

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This rule does not change the burden in the collection currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism because there are no similar State regulations, and the States do not have the authority to regulate and adjust rates for pilotage services in the Great Lakes system.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

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

K. Energy Effects

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

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. Paragraph 34(a) pertains to minor regulatory changes that are editorial or procedural in nature. This rule adjusts rates in accordance with applicable statutory and regulatory mandates. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR Part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.405, revise paragraphs (a) and (b), including the footnote to Table (a), to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$16.95 per kilometer or $29.99 per mile.[1]
Each Lock Transited.	$375.[1]
Harbor Movage	$1,229.[1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $820, and the maximum basic rate for a through trip is $3,599.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-Hour Period	$818
Docking or Undocking	780

* * * * *

■ 3. In § 401.407 revise paragraphs (a) and (b), including the footnote to Table (b), to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (east of Southeast Shoal)	Buffalo
Six-Hour Period	$722	$722
Docking or Undocking	557	557

Service	Lake Erie (east of Southeast Shoal)	Buffalo
Any Point on the Niagara River below the Black Rock Lock	N/A	1,420

(b) Area 5 (Designated Waters):

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit pilot boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$2,199	$1,299	$2,855	$2,199	N/A
Port Huron Change Point	[1] 3,829	[1] 4,436	2,877	2,237	1,591
St. Clair River	[1] 3,829	N/A	2,877	2,877	1,299
Detroit or Windsor or the Detroit River	2,198	2,855	1,299	N/A	2,877
Detroit Pilot Boat	1,590	2,199	N/A	N/A	2,877

[1] When pilots are not changed at the Detroit Pilot Boat.

■ 4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan, and Superior, and the St. Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-Hour Period	$623

Service	Lakes Huron and Michigan
Docking or Undocking	592

(b) Area 7 (Designated Waters):

Area	De Tour	Gros Cap	Any harbor
Gros Cap	$2,443	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario	2,443	920	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	2,048	920	N/A
Sault Ste. Marie, MI	2,048	920	N/A
Harbor Movage	N/A	N/A	$920

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-Hour Period	$549
Docking or Undocking	522

§ 401.420 [Amended]

■ 5. In § 401.420—

■ a. In paragraph (a), remove the number ''$102'' and add, in its place, the number ''$113''; and remove the number ''$1,604'' and add, in its place, the number ''$1,777''.

■ b. In paragraph (b), remove the number ''$102'' and add, in its place, the number ''$113''; and remove the number ''$1,604'' and add, in its place, the number ''$1,777''.

■ c. In paragraph (c)(1), remove the number ''$606'' and add, in its place, the number ''$671''; in paragraph (c)(3), remove the number ''$102'' and add, in its place, the number ''$113''; and, also in paragraph (c)(3), remove the number ''$1,604'' and add, in its place, the number ''$1,777''.

§ 401.428 [Amended]

■ 6. In § 401.428, remove the number ''$618'' and add, in its place, the number ''$684''.

Dated: July 13, 2009.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. E9–17229 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 212

RIN 0750–AG23

Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items (DFARS Case 2008–D011)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule; correction.

SUMMARY: DoD is making a correction to the interim rule published at 74 FR 34263 on July 15, 2009, which amended the Defense Federal Acquisition Regulation Supplement (DFARS) to address the conditions under which a time-and-materials or labor-hour contract may be used for the acquisition

of commercial items. This correction clarifies the types of services to which the rule applies.

DATES: *Effective date:* July 21, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Sawyer, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–8384; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION: The interim rule published at 74 FR 34263 on July 15, 2009, amended the DFARS to implement Sections 805 and 815 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). The rule specified the conditions under which a time-and-materials or labor-hour contract may be used for the acquisition of commercial items. This correction clarifies the types of services to which the rule applies, consistent with subsections (c)(1)(A) and (c)(1)(C)(i) of Section 805 of Public Law 110–181.

List of Subjects in 48 CFR Part 212

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule published at 74 FR 34263 on July 15, 2009, is corrected as follows:

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 1. The authority citation for 48 CFR Part 212 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 212.207 is amended by revising paragraphs (b)(i) and (b)(iii)(A) to read as follows:

212.207 Contract type.

(b) * * *

(i) Services acquired for support of a commercial item, as described in paragraph (5) of the definition of *commercial item* at FAR 2.101 (41 U.S.C. 403(12)(E)).

* * * * *

(iii) * * *

(A) The services to be acquired are commercial services as defined in paragraph (6) of the definition of *commercial item* at FAR 2.101 (41 U.S.C. 403(12)(F));

* * * * *

[FR Doc. E9–17321 Filed 7–20–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.070817467–8554–02]

RIN 0648–XQ36

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Limited Access General Category Scallop Fishery to Individual Fishing Quota Scallop Vessels

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the Limited Access General Category (LAGC) Scallop Fishery will close to individual fishing quota (IFQ) scallop vessels (including vessels issued an IFQ letter of authorization (LOA) to fish under appeal), until it re-opens on September 1, 2009, under current regulations. This action is based on the determination that the second quarter scallop total allowable catch (TAC) for LAGC IFQ scallop vessels is projected to be landed. This action is being taken to prevent IFQ scallop vessels from exceeding the 2009 second quarter TAC, in accordance with the regulations implementing Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP), enacted by Framework 19 to the FMP, and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the LAGC fishery to all IFQ scallop vessels is effective 0001 hr local time, July 19, 2009, through August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, (978) 281–9221, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Regulations governing fishing activity in the LAGC fishery are found at §§ 648.59 and 648.60. Regulations specifically governing IFQ scallop vessel operations in the LAGC fishery are specified at § 648.53(a)(8)(iii). These regulations authorize vessels issued a valid IFQ scallop permit to fish in the LAGC fishery under specific conditions, including a TAC. The TACs were established by the final rule that implemented Framework 19 to the FMP (73 FR 30790 May 29, 2008) and included a TAC of 1,836,010 lb (832.347 kg) that may be landed by IFQ vessels during the second quarter of the 2009 fishing year. The regulations at § 648.53(a)(8)(iii) require the LAGC fishery to be closed to IFQ vessels once the NMFS Northeast Regional Administrator has determined that the TAC is projected to be landed.

Based on the number of IFQ vessel trips, dealer reporting and vessel pre-landing reports through Vessel Monitoring Systems (VMS), and other information, a projection concluded that, given current activity levels by IFQ scallop vessels in the area, 1,836,010 lb (832.347 kg) will have been landed on July 19, 2009. Therefore, effective 0001 hours on July 19, 2009, no IFQ scallop vessel fishing under LAGC regulations may declare its intent to enter the fishery and may not fish for, possess, or retain any scallops. IFQ scallop vessels will not be allowed to fish for, possess, or retain scallops, or declare, or initiate, a scallop trip following this closure for the remainder of the 2009 second quarter, ending on August 31, 2009. Therefore, in accordance with the regulations at § 648.53(a)(8)(iii), the LAGC scallop fishery is closed to all IFQ vessels as of 0001 hr local time, July 19, 2009. The LAGC scallop fishery will re-open to IFQ scallop vessels on September 1, 2009.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

This action closes the LAGC scallop fishery to all IFQ scallop vessels until September 1, 2009. The regulations at § 648.53(a)(8)(iii) require such action to ensure that IFQ scallop vessels do not exceed the 2009 second quarter TAC. The LAGC scallop fishery opened for the second quarter of the 2009 fishing year at 0001 hours on June 1, 2009. Data indicating the IFQ scallop fleet has landed all of the 2009 second quarter TAC have only recently become available. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest to allow a period public comment. If implementation of this closure is delayed to solicit prior public comment, the quota for this quarter will be exceeded, thereby undermining the conservation objectives of the FMP. Also, if the magnitude of any overage is significant, it would warrant a decrease in the fourth quarter quota. This would have a negative economic impact on vessels that fish seasonally in that period. The AA further finds, pursuant

to 5 U.S.C 553(d)(3), good cause to waive the 30 day delay in effectiveness for the reasons stated above.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 16, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–17282 Filed 7–16–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XQ26

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA) for 96 hours. This action is necessary to fully use the 2009 total allowable catch (TAC) of northern rockfish in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 17, 2009, through 1200 hrs, A.l.t., July 21, 2009. Comments must be received at the following address no later than 4:30 p.m., A.l.t., July 31, 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], 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 (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Enter ''N/A'' in the required fields, if you wish to remain anonymous. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) file formats only.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for northern rockfish in the Western Regulatory Area of the GOA on July 9, 2009 (74 FR 33923, July 14, 2009).

NMFS has determined that approximately 392 mt of the 2009 TAC of northern rockfish in the Western Regulatory Area of the GOA remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2009 TAC of northern rockfish in the Western Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for northern rockfish in the Western Regulatory Area of the GOA for 96 hours, effective 1200 hrs, A.l.t., July 17, 2009, through 1200 hrs, A.l.t., July 21, 2009.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reopening and closure of northern rockfish in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 15, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 16, 2009.

Kristen C. Koch,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–17279 Filed 7–16–09; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 138
Tuesday, July 21, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0654; Directorate Identifier 2008–NM–083–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Model SAAB 2000 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

There have been reported incidents of brinelling to the self-sealing coupling Part Number (P/N) 9304000–303 (Nipple Assembly). The wear is visible in the groove of the nipple, caused by the socket locking balls. During tear down investigations of self-sealing coupling P/N 9304000–305 (Socket Assembly), internal socket wear has been observed. Wear that exceeds the allowable limits could lead to reduced oil flow, and further wear could contribute to separation of the Self-Seal Coupling, making the engine inoperable and subsequent shut down. As secondary damage, the generator may fail, releasing oil into the nacelle and increasing the possibility of fire.

* * * * *

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

DATES: We must receive comments on this proposed AD by August 20, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Saab Aircraft AB, SAAB Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; e-mail *saab2000.techsupport@saabgroup.com*; Internet *http://www.saabgroup.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0654; Directorate Identifier 2008–NM–083–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0030, dated February 15, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

There have been reported incidents of brinelling to the self-sealing coupling Part Number (P/N) 9304000–303 (Nipple Assembly). The wear is visible in the groove of the nipple, caused by the socket locking balls. During tear down investigations of self-sealing coupling P/N 9304000–305 (Socket Assembly), internal socket wear has been observed. Wear that exceeds the allowable limits could lead to reduced oil flow, and further wear could contribute to separation of the Self-Seal Coupling, making the engine inoperable and subsequent shut down. As secondary damage, the generator may fail, releasing oil into the nacelle and increasing the possibility of fire.

For the reason described above, this Airworthiness Directive (AD) requires the inspection of the affected nipple- and socket assemblies and, if wear is found outside the specified limits, replacement of worn parts.

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

Relevant Service Information

Saab has issued Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified

of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 6 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $480, 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab AB, Saab Aerosystems: Docket No. FAA–2009–0654; Directorate Identifier 2008–NM–083–AD.

Comments Due Date

(a) We must receive comments by August 20, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab AB, Saab Aerosystems Model SAAB 2000 airplanes, certificated in any category, serial numbers 004 through 063 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 79: Engine Oil.

Reason

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

There have been reported incidents of brinelling to the self-sealing coupling Part Number (P/N) 9304000–303 (Nipple Assembly). The wear is visible in the groove of the nipple, caused by the socket locking balls. During tear down investigations of self-sealing coupling P/N 9304000–305 (Socket Assembly), internal socket wear has been observed. Wear that exceeds the allowable limits could lead to reduced oil flow, and further wear could contribute to separation of the Self-Seal Coupling, making the engine inoperable and subsequent shut down. As secondary damage, the generator may fail, releasing oil into the nacelle and increasing the possibility of fire.

For the reason described above, this Airworthiness Directive (AD) requires the inspection of the affected nipple- and socket assemblies and, if wear is found outside the specified limits, replacement of worn parts.

Actions and Compliance

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

(1) Within 12 months after the effective date of this AD: Inspect the affected nipple assembly part number (P/N) 9304000–303 and socket assembly P/N 9304000–305 for signs of damage, wear, and leaking of the nipple and socket, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours.

(2) If any wear is found during any inspection required by paragraph (f)(1) of this AD that is beyond the limits as specified in Saab Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007, prior to further flight, replace the part with a new or serviceable unit having the same part number, in accordance with Saab Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007.

(3) If any leak or damage is found during any inspection required by paragraph (f)(1) of this AD, prior to further flight, replace the part with a new or serviceable unit having the same part number in accordance with step 2.C.(1)(a)*6* or step 2.C.(1)(a)*10,* as applicable, in Saab Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007.

(4) Replacement of parts does not constitute terminating action for the inspection requirements of this AD.

FAA AD Differences

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

Other FAA AD Provisions

(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: Shahram

Daneshmandi, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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 European Aviation Safety Agency Airworthiness Directive 2008–0030, dated February 15, 2008; and Saab Service Bulletin 2000–79–006, Revision 01, dated October 15, 2007; for related information.

Issued in Renton, Washington, on July 13, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–17227 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

Docket No. RM08–13–000

Transmission Relay Loadability Reliability Standard; Notice of Extension of Time

July 13, 2009.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking: extension of comment period.

SUMMARY: On May 21, 2009, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking proposing to approve Reliability Standard PRC–023–1 (Transmission Relay Loadability Reliability Standard) developed by the North American Electric Reliability Corporation. The date for filing comments on the Commission's NOPR is being extended at the request of the American Public Power Association, Edison Electric Institute, the Electric Power Supply Association and the National Rural Electric Cooperative Association.

DATES: Comments are due on or before August 17, 2009.

ADDRESSES: Interested persons may submit comments, identified by Docket No. RM08–13–000, by any of the following methods:

• *Agency Web site: http://www.ferc.gov:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Joshua Konecni (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6291.

Michael Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8532.

Cynthia Pointer (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6069.

Robert Snow (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6716.

SUPPLEMENTARY INFORMATION:

Transmission Relay Loadability Reliability Standard; Notice of Extension of Time

On July 9, 2009, the American Public Power Association, Edison Electric Institute, the Electric Power Supply Association, and the National Rural Electric Cooperative Association (Movants), on behalf of their respective member utilities, filed a motion for an extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking issued May 21, 2009, in the above-referenced proceeding. *Transmission Relay Loadability Reliability Standard,* 127 FERC ¶ 61,175 (2009) (May 21 NOPR). The motion states that because the Commission's May 21 NOPR raises many new technical and policy issues, the Movants require additional time to conduct member company consultations and to prepare reasoned comments.

Upon consideration, notice is hereby given that an extension of time for filing comments on the May 21 NOPR is granted to and including August 17, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17235 Filed 7–20–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AB02

Financial Crimes Enforcement Network: Anti-Money Laundering Program and Suspicious Activity Report Requirements for Non-Bank Residential Mortgage Lenders and Originators

AGENCY: Financial Crimes Enforcement Network (FinCEN), Department of the Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: FinCEN is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comment on a wide range of questions pertaining to the possible application of anti-money laundering (AML) program and suspicious activity report (SAR) regulations to a specific sub-set of loan and finance companies: Non-bank residential mortgage lenders and originators. FinCEN seeks comment on: An incremental approach to the issuance of regulations for loan and finance companies that would initially affect only those persons engaged in non-bank residential mortgage lending or origination; how any such regulations should define persons engaged in non-bank residential mortgage lending or origination; the financial crime and money laundering risks posed by such persons; how AML programs for such persons should be structured; whether such persons should be covered by BSA requirements other than the AML program requirement, including SAR reporting; and whether any such persons should be exempted from AML program or SAR reporting requirements.

DATES: Written comments on this ANPRM must be received on or before August 20, 2009.

ADDRESSES: *FinCEN:* You may submit comments, identified by Regulatory

Identification Number (RIN) 1506–AB02, by any of the following methods:

• *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include 1506–AB02 in the submission. Refer to Docket Number TREAS–FinCen-2009–0002.

• *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include 1506–AB02 in the body of the text.

Please submit comments by one method only. All comments submitted in response to this ANPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call). In general, FinCEN will make all comments publicly available by posting them on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

FinCEN: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732 and select option 6.

SUPPLEMENTARY INFORMATION:

I. Background

The Bank Secrecy Act (BSA) [1] authorizes the Secretary of the Treasury (the Secretary) to issue regulations requiring financial institutions to keep records and file reports that the Secretary determines ''have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' [2] The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[3]

Financial institutions are required to establish AML programs that include, at a minimum: (1) The development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs.[4] When prescribing minimum standards for AML programs, FinCEN must ''consider the extent to which the requirements imposed under [the AML program requirement] are commensurate with the size, location, and activities of the financial institutions to which such regulations apply.'' [5] Federally regulated depository institutions are already required to have AML programs.[6] This ANPRM considers imposing on companies performing certain services with respect to residential mortgages, analogous requirements to those currently applicable to depository institutions performing those same services.

The BSA defines the term ''financial institution'' to include, in part, ''loan or finance company'' and ''persons involved in real estate closings and settlements.'' [7] On April 29, 2002, and again on November 6, 2002, FinCEN temporarily exempted both of these categories of financial institutions, among others, from the requirement to establish an AML program.[8] The purpose of the temporary exemption was to enable Treasury and FinCEN to study the exempted categories of institutions and to consider the extent to which AML requirements should be applied to them, taking into account their specific characteristics and money laundering vulnerabilities.

On April 10, 2003, FinCEN issued an ANPRM regarding AML requirements for persons involved in real estate closings and settlements.[9] The 2003 ANPRM noted that the BSA had no definition of the term ''persons involved in real estate closings and settlements;'' that FinCEN had not had occasion to define the term in a regulation; and that the legislative history of the term provided no insight into how Congress intended the term to be defined. The 2003 ANPRM also noted that real estate transactions could involve multiple persons, including: Real estate agents, banks, mortgage banks, mortgage brokers, title insurance companies, appraisers, escrow agents, settlement attorneys or agents, property inspectors and other persons directly and tangentially involved in property financing, acquisition, settlement, and occupation. The 2003 ANPRM further noted that the persons involved in real estate transactions, and the nature of their involvement, could vary with the contemplated use of the real estate, the nature of the rights to be acquired, or how these rights were to be held, *e.g.,* for residential, commercial, portfolio investment, or development purposes. Finally, the 2003 ANPRM expressed FinCEN's views as to guiding principles that should be considered in defining persons involved in real estate closings and settlements. Any definitions or terms that define the scope of the rule should consider: (1) Those persons (*i.e.,* individuals and business entities) whose services rendered or products offered in connection with a real estate closing or settlement can be abused by money launderers; (2) those persons who are positioned to identify the purpose and nature of the transaction; (3) the importance of various participants to successful completion of the transaction, which may suggest that they are well positioned to identify suspicious conduct; (4) the degree to which professionals may have very different roles, in different transactions, that may result in greater exposure to money laundering; and (5) involvement with the actual flow of funds used in the transaction.[10]

FinCEN has not issued any additional notices regarding persons involved in real estate closings and settlements since the 2003 ANPRM. This is FinCEN's first notice regarding loan and finance companies. FinCEN has in the interim continued its research and analysis related to the categories of financial institutions exempted in 2002.

In view of increasing concern among regulators, law enforcement and Congress over abusive and fraudulent sales and financing practices in both the primary and secondary residential mortgage markets, FinCEN also has undertaken a number of strategic, outreach and law enforcement support initiatives focused on residential mortgage lending.

FinCEN is contemplating an incremental approach to implementation of AML regulations for loan and finance companies that would focus first on those business entities that are engaged in residential mortgage lending or origination and are not currently subject to any AML program requirement under the BSA or other Federal law. These ''non-bank residential mortgage lenders and originators'' are primary providers of mortgage finance—in most cases dealing directly with the consumer—and are in a unique position to assess and identify

[1] ''Bank Secrecy Act'' is the name that has come to be applied to the Currency and Foreign Transactions Reporting Act (Titles I and II of Pub. L. 91–508), its amendments, and the other statutes referring to the subject matter of that Act. These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto.

[2] 31 U.S.C. 5311.

[3] *See* Treasury Order 180–01 (Sept. 26, 2002).

[4] 31 U.S.C. 5318(h).

[5] Public Law 107–56 section 352(c), 115 Stat. § 322, *codified at* 31 U.S.C. 5318 note. Public Law 107–56 is the USA PATRIOT Act of 2001.

[6] *See* 31 CFR 103.120.

[7] 31 U.S.C. 5312(a)(2)(P), (U).

[8] *See* 31 CFR 103.170; 67 FR 21113 (Apr. 29, 2002), *as amended at* 67 FR 67549 (Nov. 6, 2002) and *corrected at* 67 FR 68935 (Nov. 14, 2002).

[9] *See* 68 FR 17569 (Apr. 10, 2003).

[10] *See* 68 FR 17569, 17570 (Apr. 10, 2003).

money laundering risks and fraud while directly assisting consumers with their financial needs and protecting them from the abuses of financial crime. FinCEN believes that new regulations requiring non-bank residential mortgage lenders and originators to adopt AML programs and report suspicious transactions would augment FinCEN's initiatives in this area. Among other benefits, such regulations would complement efforts underway by mortgage companies to comply with the nationwide licensing system and registry under development since the passage of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act).[11] As mortgage companies implement systems and procedures to comply with the S.A.F.E. Act, there will be opportunities for them to review and enhance their educational and training programs to ensure that employees are able to identify and appropriately deal with fraud, money laundering and other financial crimes.

II. Issues for Comment

This ANPRM solicits comment on all aspects of the potential impact of applying BSA requirements to non-bank residential mortgage lenders and originators.

1. What Are the Money Laundering Risks in the Non-Bank Residential Mortgage Finance Sector?

As noted in the 2003 ANPRM, the residential real estate sector may be vulnerable at all stages of the money laundering process. Money laundering is a process by which funds with an illicit origin are converted into funds with a plausibly legitimate origin. There are three general stages of money laundering. The ''placement'' stage is the stage at which funds from illegal activity or funds intended to support illegal activity are first introduced into the financial system. Money laundering ''layering'' involves the distancing of illegal funds from their criminal source through the creation of complex layers of financial transactions. ''Integration'' occurs when illegal funds are made to appear to have been derived from a legitimate source. Despite the relative illiquidity of most real estate assets, money launderers have used residential mortgage transactions—fraudulently and legitimately structured—to disguise the proceeds of crime.

In recent years, a significant percentage of SARs filed with FinCEN have reported suspected fraud-for-profit and fraud-for-housing schemes involving real estate brokers, appraisers, and other persons associated with real estate finance and settlements.[12] FinCEN studies also have shown the connection between persons involved in mortgage fraud and other suspected financial crimes.[13] The crime of money laundering is defined, in part, with respect to the proceeds of specific unlawful, ''predicate'' activities. Both mortgage fraud and the act of laundering mortgage fraud proceeds are crimes under Federal and State laws, and both are destructive to consumers, individual businesses and the financial system as a whole.

FinCEN seeks comment on the experience of the residential real estate lending sector with money laundering and fraud schemes, the existence of any safeguards in the industry to guard against these crimes, the impact that compliance with AML program and SAR reporting requirements may have on business operations, and what additional steps may be necessary to protect the industry from abuse by money launderers, including those who finance terrorist activity.

2. Should FinCEN Pursue an Incremental Approach to Regulation of Loan and Finance Companies That Focuses First on Persons Engaged in Non-Bank Residential Mortgage Lending or Origination?

As is the case with the term ''persons involved in real estate closings and settlements,'' the term ''loan or finance company'' is not defined or discussed in any FinCEN regulation, and there is no legislative history on the term. The term, however, could conceivably extend to any business entity that makes loans or finances purchases to or on behalf of consumers and businesses. For consumers, loan and finance companies originate loans and leases to finance the purchase of consumer goods such as automobiles, furniture, and household appliances. They also extend personal loans and loans secured by real estate mortgages, including home equity loans. For businesses, they supply short- and intermediate-term credit for such purposes as the purchase of equipment and motor vehicles and the financing of inventories. In addition, specialized wholesale loan and finance companies provide liquidity that allows retail loan and finance companies, as well as banks and others, to service end users.[14]

There has been a ''regulatory gap'' between the BSA's coverage of depository institutions and non-bank residential mortgage lenders and originators. FinCEN is concerned that this disparity in BSA regulatory coverage may have made non-bank residential mortgage lenders and originators more vulnerable to financial crime and money laundering than their bank counterparts. FinCEN believes that implementation of appropriate, risk-based AML programs by non-bank residential mortgage lenders and originators will strengthen their existing compliance and anti-fraud programs, as well as the training and licensing programs that will be updated to comply with the S.A.F.E. Act. Moreover, a SAR reporting regulation likely would reduce the vulnerability of this sector and substantially expand FinCEN's BSA database, thereby giving our regulatory and law enforcement partners a more complete macro and micro (case-specific) picture of mortgage-related financial crimes. In these and other respects, non-bank residential mortgage lenders and originators may assume an increasingly crucial role in government and industry efforts to protect consumers, mortgage finance businesses, and the United States financial system from money laundering and other financial crimes.

FinCEN is inclined to defer regulations for commercial real estate finance businesses and other types of consumer and commercial finance businesses until further research and analysis can be conducted to enhance our understanding of their business operations and money laundering vulnerabilities.

[11] *See* Title V of Division A of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2810 (2008), *codified at* 12 U.S.C. 5101, *et seq.*

[12] *See Filing Trends in Mortgage Loan Fraud,* Feb. 2009, *http://www.fincen.gov/news_room/nr/pdf/20090225a.pdf; Mortgage Loan Fraud: an Update of Trends Based upon Analysis of Suspicious Activity Reports,* Apr. 2008, &fnl;*http://www.fincen.gov/news_room/rp/files/MortgageLoanFraudSARAssessment.pdf; Suspected Money Laundering in the Residential Real Estate Industry,* Apr. 2008, *http://www.fincen.gov/news_room/rp/files/MLR_Real_Estate_Industry_SAR_web.pdf; Money Laundering in the Commercial Real Estate Industry;* Dec. 2006, *http://www.fincen.gov/news_room/rp/reports/pdf/CREassessment.pdf*; *Mortgage Loan Fraud: An Industry Assessment Based Upon Suspicious Activity Report Analysis,* Nov. 2006, *http://www.fincen.gov/news_room/rp/reports/pdf/mortgage_fraud112006.pdf.*

[13] *See Mortgage Loan Fraud Connections with Other Financial Crime: An Evaluation of Suspicious Activity Reports Filed by Money Services Businesses, Securities and Futures Firms, Insurance Companies and Casinos,* Mar. 2009, *http://www.fincen.gov/news_room/rp/files/mortgage_fraud.pdf.*

[14] The North American Industry Classification System classifies approximately 10 types of mortgage finance-related businesses and professions and over 60 other businesses, professions and institutions (*e.g.,* consumer and commercial finance companies, pawnshops, auto finance, equipment leasing, personal credit companies, industrial loan companies and government sponsored enterprises) as primarily engaged in consumer and commercial lending and finance.

FinCEN seeks general comment on whether FinCEN should adopt this incremental approach or some other approach to implementation of AML program and SAR regulations for loan and finance companies.

3. How Should Persons Engaged in Non-Bank Residential Mortgage Lending or Origination Be Defined?

Most real estate finance—both residential and commercial—involves complex transactions and multiple parties whose roles are not always readily discernable by the titles and terms used to describe them in generally accepted business practices or under applicable licensing and registration regimes. The primary mortgage market in the United States is very fragmented, and even simple real estate finance transactions may involve one or more parties that may originate, fund, broker, purchase, transfer, service, securitize, and insure the mortgage loan.

FinCEN believes that the views, assumptions and guiding principles noted in the 2003 ANPRM are equally relevant to the development of AML program and SAR reporting regulations for non-bank residential mortgage lenders and originators. AML obligations should focus on those persons (*i.e.,* individuals and business entities) that conduct the activities that place them in the best position to identify the nature of the transaction, recognize suspicious activity and prevent misuse of their services for money laundering and other financial crimes. This activities-based approach focuses on the nature of the activity conducted and its primary function in a particular residential mortgage transaction, rather than on the name or title of the person. Moreover, FinCEN believes that any regulations for non-bank residential mortgage lenders and originators should strive to avoid, to the greatest extent possible, requirements that overlap or duplicate those of other BSA rules.

FinCEN seeks comment on which participants involved in non-bank residential mortgage finance are in a position where they can effectively identify and guard against financial crime and money laundering in the transactions they conduct. Information and comment may, among other things, address both the extent to which various participants have access to information regarding the nature and purpose of the transactions at issue and the importance of the participants' involvement to successful completion of the transactions. Comments are welcome from those involved centrally in the residential mortgage finance process (*i.e.,* those who may act as an agent for some or all of the parties and are responsible for reviewing the form and type of payment, as well as being aware of the parties to the mortgage transaction), and those who view their involvement as more peripheral.

Various definitions in the S.A.F.E. Act may be a useful reference for comments related to the development of regulatory definitions that would affect the scope of any proposed regulations for non-bank residential mortgage lenders and originators. FinCEN seeks comment specifically on whether FinCEN should adopt a definition of ''non-bank mortgage lender or originator'' that would be similar to the definition of ''loan originator'' in the S.A.F.E. Act.[15] The term ''loan originator'' in the S.A.F.E. Act means individuals who take applications for residential mortgage loan transactions, including employees of mortgage bankers and brokers, as well as loan officers of banks and their subsidiaries. The S.A.F.E. Act also provides a broad definition of ''residential mortgage loan'' that may be a useful reference for comments: ''any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling * * *.'' [16] As noted, the focus of this ANPRM is non-bank residential mortgage lenders and originators who are primary providers of mortgage finance and are in the best position to prevent and detect money laundering, fraud and other financial crimes. FinCEN seeks comment on whether any regulations promulgated by FinCEN should cover the same persons as those covered by the S.A.F.E. Act, or a broader or narrower range of persons.

4. How Should the Anti-Money Laundering Requirements for Persons Engaged in Non-Bank Residential Mortgage Lending or Origination Be Structured?

In applying the BSA to persons engaged in non-bank residential mortgage lending and origination, FinCEN must consider the extent to which the standards for AML programs are commensurate with the size, location, and activities of such persons. FinCEN recognizes that while large businesses are engaged in mortgage finance, businesses in this industry also include smaller companies or sole proprietors. FinCEN thus seeks comment on any particular concerns smaller businesses may have regarding the implementation of an AML program.

FinCEN believes that AML programs will complement the anti-fraud and general compliance programs that non-bank residential mortgage lenders and originators have established to comply with other Federal and State laws and protect their own business operations. Many non-bank residential mortgage lenders and originators may be able to integrate risk-based AML reporting programs into existing enterprise-wide anti-fraud and compliance programs in a symbiotic manner that utilizes economies of scale and enhances the effectiveness of a business's compliance measures. FinCEN therefore seeks comment on what types of programs and practices that persons engaged in non-bank residential mortgage lending or origination have in place to prevent mortgage fraud and other illegal activities, and the applicability of such programs to the development of AML programs.

5. Should FinCEN Require Persons Engaged in Non-Bank Residential Mortgage Lending or Origination To File SARs or Comply With Any Other BSA Requirements?

As FinCEN emphasized in its recent report on mortgage loan fraud trends, SARs provide a valuable tool for regulatory agencies and law enforcement seeking to isolate specific instances of potential criminal activity for further investigation, and to identify emerging money laundering and terrorism financing trends.[17] The due diligence necessary for financial institutions to detect and report known or suspected suspicious activity greatly reduces vulnerability to the abuses of money laundering and terrorist financing.

FinCEN has promulgated SAR reporting regulations for a number of financial institutions that have AML program requirements, including mutual funds, insurance companies, futures commission merchants and introducing brokers in commodities, banks, brokers or dealers in securities, money services businesses, and casinos.[18] FinCEN anticipates that any SAR regulation proposal applicable to persons engaged in non-bank residential mortgage lending or origination would have similar reporting standards, thresholds and procedures as those set

[15] 12 U.S.C. 5102(3).

[16] 12 U.S.C. 5102(8).

[17] Filing Trends in Mortgage Loan Fraud, Feb. 2009, page 1, *http://www.fincen.gov/news_room/nr/pdf/20090225a.pdf.*

[18] *See* 31 CFR 103.15–103.21.

forth in SAR regulations for other industries.

In addition to any proposed SAR reporting regulations for non-bank residential mortgage lenders or originators, FinCEN also may propose to require these businesses to file currency transaction reports (rather than Form 8300) or retain certain records, including those related to large transmittals of funds.[19] These changes could be accomplished through amendments to the definitions regulation, 31 CFR 103.11 (specifically, to the definition of ''financial institution''), and the exemptions regulation, 31 CFR 103.170 (specifically, to the temporary exemption from the AML program requirement); or they could be accomplished by issuing new regulations. FinCEN also recognizes that persons engaged in residential mortgage lending or origination may already have programs and practices in place to meet existing legal obligations or protect the business from fraud and other illegal activities. FinCEN requests comment on any aspect of possible new regulatory requirements, including any factors FinCEN should consider in structuring new requirements, exceptions, and differences from established regulations. Useful information would include any available estimates of volumes of transactions that might be subject to particular reporting or recordkeeping requirements.

6. Should Any Persons or Transactions Be Exempted From Coverage of AML or SAR Regulations?

FinCEN also solicits comment regarding whether there should be regulatory exemptions for any category of persons engaged in non-bank residential mortgage lending or origination, or any category of transactions conducted by such persons. Comments regarding possible exemptions should be designed to enable FinCEN to evaluate whether the risk of money laundering through a category of persons or transactions is sufficiently small that a proposed rule could be crafted that would exempt the categories, while also providing adequate protection for the industry from the risks of money laundering. The question of exemption is specifically directed to professionals and those persons who are primarily engaged in a business related to residential mortgage lending or origination.

III. Conclusion

With this ANPRM, FinCEN is seeking input on how FinCEN should implement the requirements of the BSA with respect to non-bank residential mortgage lenders and originators. We also seek input on: (1) Estimates and financial projections on the likely costs of complying with AML program and SAR reporting regulations by specific types of non-bank residential mortgage lenders and originators; (2) the impact of any such regulatory requirements on industry profitability, growth and business practices; (3) the impact of these requirements on consumers seeking to obtain residential mortgages; (4) the effectiveness of examining for and enforcing compliance with these requirements; and (5) the advisability of establishing some minimum transaction threshold value or annual volume threshold below which some or all of these requirements would not apply. We also solicit comment on the impact to law enforcement and regulatory agencies. FinCEN welcomes comments on all aspects of the ANPRM, and we encourage all interested parties to provide their views.

IV. Executive Order 12866

This advance notice of proposed rulemaking is not a significant regulatory action under Executive Order 12866. Therefore, a Regulatory Assessment is not required.

William F. Baity,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. E9–17117 Filed 7–20–09; 8:45 am]

BILLING CODE 4810–02–P

[19] *See* 31 CFR 103.22, 103.30 and 103.33.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0395]

RIN 1625–AA08

Special Local Regulation, Swim Across the Sound, Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent special local regulation on the navigable waters of Long Island Sound between Port Jefferson, NY and Captain's Cove Seaport, Bridgeport, CT for the annual Swim Across the Sound event. This special local regulation is necessary to provide for the swimmers' safety on the navigable waters of Long Island Sound. Under this proposed regulation, persons and vessels are prohibited from entering the regulated area during this annual event unless entry is authorized by the Captain of the Port Long Island Sound or by designated on-scene patrol personnel.

DATES: Comments and related material must be received by the Coast Guard on or before August 20, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0395 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

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

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail: Chief Petty Officer Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, e-mail *christie.m.dixon@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–2009–0395), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and

material online (via *http://www.regulations.gov*) or by fax, mail, or hand deliver, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0395'' 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 comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0395 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Swim Across the Sound has been successfully held for over twenty years on the waters of Long Island Sound between Port Jefferson, NY and Bridgeport, CT. This 25 KM swim has historically involved over 200 swimmers and accompanying safety craft. The swim course is located directly northwest of Port Jefferson, NY and extends to Captain's Cove Seaport, Bridgeport, CT. Currently there is no regulation in place to protect the swimmers or safety craft from the hazards imposed by passing water traffic and other water related activities.

To ensure the continued safety of the swimmers, safety craft and the boating public, the Coast Guard is proposing to establish a special local regulation that would prohibit unauthorized persons and vessel traffic from approaching within 100 yards of the swim participants as they proceed along the race course. This action is intended to increase the safety of the swimmers, the swimmer's safety craft and the boating community from the hazards posed by vessels operating near persons participating in this open water swim.

Discussion of Proposed Rule

The Coast Guard proposes to establish a permanent special local regulation on the navigable waters of Long Island Sound to exclude all unauthorized persons and vessels from approaching within 100 yards away from any swimmer and/or the planned race course. The regulated area is bounded by the following approximate points: Starting Point of Port Jefferson Beach 40°58′11.71″ N, 073°05′51.12″ W, north westerly to the finishing point at Captain's Cove Seaport at approximate position 41°09′25.07″ N, 073°12′47.82″ W. The duration of the event, and thus the enforcement period of the special local regulation, is generally from 8:30 a.m. to 7:30 p.m. on the day of the race.

While the special local regulation will be permanent, it will only be enforced for approximately 11 hours on the day of the race normally held on a single day in August. Marine traffic that may safely do so may transit outside of the area during the enforcement period, allowing navigation in all other portions of Long Island Sound not covered by this rule. Within the regulated area, approaching within 100 yards of any swimmer would be prohibited unless authorized by the Captain of the Port Long Island Sound or designated on-scene patrol personnel. Notification of the race date and subsequent enforcement of the special local regulation will be made via marine broadcasts and broadcast notice to mariners. This rule would be effective annually on a date in August to be specified in the **Federal Register**. Any violation of the special local regulation described herein is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This regulation may have some impact on the public, but any potential impact would be minimized for the following reason: Vessels may transit in all areas of Long Island Sound, other than within 100 yards of event participants within the regulated area; thus vessel traffic would be allowed to pass through the regulated area during the event as long as they remained outside 100 yards of any swimmer. Further, vessels would only have minimal increased transit time and the special local regulation will only be enforced for approximately 11 hours on a single specified day each August, made publicly known in advance of the scheduled event.

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 that 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 proposed rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in those portions of Long Island Sound covered by the special local regulation. Before the activation of the zone, we would issue maritime advisories in advance of the event and make them widely available to users of the waterway. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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: MSTC Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, *christie.m.dixon@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions 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 promulgation of special local regulations in conjunction with a permitted marine event and falls under the category of actions under paragraph 34(h) of the instruction for which further environmental analysis is not normally required. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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 § 100.125 to read as follows:

§ 100.125 Swim Across the Sound, Long Island Sound, Port Jefferson, NY to Captain's Cove Seaport, Bridgeport, CT.

(a) *Regulated area.* All navigable waters of Long Island Sound within 100 yards of the swim event race course consisting of the following points: Starting Point at Port Jefferson Beach at approximate position 40°58′11.71″ N, 073°05′51.12″ W, north-westerly to the finishing point at Captain's Cove Seaport at approximate location 41°09′25.07″ N, 073°12′47.82″ W.

(b) *Definitions.* The following definition applies to this section: *Designated On-scene Patrol Personnel,* means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Special local regulations.* (1) No person or vessel may approach or remain within 100 yards of any swimmer within the regulated area during the enforcement period of this regulation unless they are officially participating in the Swim Across the Sound event or are otherwise authorized by the Captain of the Port Long Island Sound or by Designated On-scene Patrol Personnel.

(2) All persons and vessels must comply with the instructions from the Coast Guard Captain of the Port or the Designated On-scene Patrol Personnel. The Designated On-scene Patrol Personnel may delay, modify, or cancel the swim event as conditions or circumstances require.

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

(4) Persons and vessels desiring to enter the regulated area within 100 yards of a swimmer may request permission to enter from the designated on scene patrol personnel by contacting them on VHF–16 or by a request to the Captain of the Port Long Island Sound via phone at (203) 468–4401.

(d) *Enforcement Period.* This rule is enforced annually on a date in August. Notification of the specific date and enforcement of the special local regulation will be made via Notice in the **Federal Register**, marine broadcasts and local Notice to Mariners.

Dated: June 17, 2009.

Daniel A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. E9–17244 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2009–7; Order No. 245]

Periodic Reporting Rules

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rule; availability of rulemaking petition.

SUMMARY: Under a new law, the Postal Service must file an annual compliance report with the Postal Regulatory Commission on costs, revenues, rates and quality of service associated with its products. This document notes that the Postal Service has filed a petition for consideration of a proposed change in analytical methods approved for use in periodic reporting. The focus of this petition (involving an issue referred to as Proposal Two) is on the Postal Service's development of revenue, piece and weight estimates for bulk mail categories. The Commission has established a docket for consideration of Proposal Two and has addressed preliminary procedural matters, including an opportunity for public comment. Proposal One is under consideration in a pending docket.

DATES: Deadline for initial comments: July 29, 2009.

ADDRESSES: File comments electronically via the Commission's Filing Online system.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6829 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory History, 74 FR 31386 (July 1, 2009).

On July 7, 2009, the Postal Service filed a petition to initiate an informal rulemaking proceeding to consider a change in the analytical methods approved for use in periodic reporting.[1] The Petition explains that the Postal Service's current practice is to combine data from two sources to fashion Revenue, Pieces, and Weight (RPW) estimates for the various categories of bulk mail. It combines census data recorded by its PostalOne! system (which reflects automated office activity) with data found on postage statements that are taken from a probability sample of non-automated offices. It notes that the sample data taken from non-automated offices are becoming less reliable as the pool of non-automated offices shrinks and the sample frames for that pool become increasingly dated. It also notes that the sampling process is more expensive than the modeling process that it proposes.

The Postal Service proposes to discontinue sampling non-automated offices when preparing its RPW estimates. In place of the current non-automated office sample, it proposes to take the universe of offices, and stratify it according to size. It will then impute the incidence of mail characteristics for a given product found in automated offices in a particular size stratum, as reflected in PostalOne! data, to the characteristics of products found in non-automated offices in the same size stratum. The Postal Service calls this its ''modeling'' approach. Petition at 1–2.

The Petition, which is available on the Commission's Web site, *http://www.prc.gov*, includes appendices purporting to show the results of testing the accuracy of its modeling approach in estimating revenue, pieces, and weight with respect to all market dominant bulk mail categories. The Postal Service concludes that the results are accurate for all categories except for Within County Periodicals. Even with respect to Within County Periodicals, it asserts that the modeled results are more accurate than the current approach which employs data gathered from a sample of non-automated offices. *Id.* at 2 and Attachment at 2.

The attachment and the appendices to the Postal Service's Petition explain its proposal in more detail, including its background, objective, rationale, and estimated impact.

It is ordered:

1. Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Change in Analytic Principles (Proposal Two), filed July 7, 2009, is granted.

2. The Commission establishes Docket No. RM2009–7 to consider the matters raised by the Postal Service's Petition.

[1] Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Change in Analytic Principles (Proposal Two), July 7, 2009 (Petition).

3. Interested persons may submit initial comments on or before July 29, 2009.

4. The Commission will determine the need for reply comments after review of the initial comments.

5. Diane Monaco is designated to serve as the Public Representative representing the interests of the general public in this proceeding.

6. The Secretary shall arrange for publication of this notice in the **Federal Register**.

Authority: 39 U.S.C. 3652.

Issued: July 10, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–17285 Filed 7–20–09; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0344; FRL–8932–7]

Approval and Promulgation of Air Quality Implementation Plans; Reformulated Gasoline and Diesel Fuels; California; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** on July 10, 2009, pertaining to revisions to reformulated gasoline and diesel fuels regulations for the State of California.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, (415) 947–4152, *buss.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 10, 2009 (74 FR 33196), EPA proposed to approve revisions to reformulated gasoline and diesel fuel regulations for the State of California. This document makes the following three corrections:

1. The correct title for the July 10, 2009 notice should read, ''Approval and Promulgation of Air Quality Implementation Plans; Reformulated Gasoline and Diesel Fuels; California.''

2. Section B. of the preamble entitled, ''What Should I Consider as I Prepare My Comments for EPA?'' should be deleted.

3. Section V. of the preamble, entitled ''Administrative Requirements,'' should be replaced with the following:

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.''

Today's correction does not otherwise change the remaining portions of the July 10, 2009 proposed rule.

Dated: July 14, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–17259 Filed 7–20–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 404

[Docket No. USCG–2009–0552]

Great Lakes Pilotage Ratemaking Methodology

AGENCY: Coast Guard, DHS.

ACTION: Request for public comments.

SUMMARY: The Coast Guard requests public comments on the adequacy of existing regulations that provide the methodology for reviewing and adjusting rates for pilots on the U.S. waters of the Great Lakes. The Coast Guard seeks these comments in order to obtain a better understanding of how well Great Lakes shippers, Great Lakes pilots, and the general public think those formulas represent the realities of commercial shipping on the Great Lakes and fairly balance competing considerations. The Coast Guard will refer the comments it receives to the Great Lakes Pilotage Advisory Committee for review and recommendations.

DATES: Comments and related material must reach the Docket Management Facility on or before October 19, 2009 for consideration.

ADDRESSES: You may submit written comments identified by docket number USCG–2009–0552 using any one of the following:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

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

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. Our online

docket is available on the Internet at *http://www.regulations.gov* under docket number USCG–2009–0552.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this notice, please call or e-mail Mr. Paul Eulitt, CG–54122, Coast Guard, telephone 202–372–1537, Coast Guard; e-mail *Paul.W.Eulitt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material in response to this notice. We discuss why we seek comments, and suggest what your comments should cover, under ''Background and Purpose.'' 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 notice (USCG–2009–0552). You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0552'' 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.

Viewing comments: To view comments, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0552 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Background and Purpose

This notice is issued pursuant to the authority granted to the Secretary of Homeland Security by the Great Lakes Pilotage Act of 1960 (''the Act''), 46 U.S.C. Chapter 93 as amended, as delegated by the Secretary to the Coast Guard in Department of Homeland Security Delegation No. 0170.1. The Act requires foreign-flag vessels and U.S.-flag vessels engaged in foreign trade to use federally registered Great Lakes pilots while transiting the St. Lawrence Seaway and the Great Lakes system, and requires the Secretary to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' 46 U.S.C. 9303(f). Coast Guard regulations implement the Act and can be found in 46 CFR, parts 401 through 404.

The Great Lakes pilotage regulations contain ratemaking formulas that we apply each year in reviewing rates and, if necessary, adjusting them. The formulas appear in appendices to 46 CFR part 404. The final rule for our 2009 rate review and adjustment appears elsewhere in today's **Federal Register**, and you may consult it for more information about the ratemaking process.

In past years, some commenters on our annual ratemakings have suggested we need to review our ratemaking formulas. Some of these commenters have implied the need for a general review, while others have focused on our definition of ''bridge hours.'' Bridge hours are a key component in determining the target rate of compensation that our ratemaking aims to provide for pilots, and currently are defined as ''the number of hours a pilot is aboard a vessel providing pilotage service.'' 46 CFR part 404, Appendix A, Step 2.B(1). Some commenters have suggested that the current definition is too narrow, in part because it does not include a pilot's wait time due to vessel delays or detentions.

At this time, there is no Coast Guard rulemaking project under way to revise our current Great Lakes pilotage regulations, and this notice is not an ''advance notice'' of a proposed rulemaking nor does it indicate that such a rulemaking has been opened. However, we are interested in obtaining as comprehensive an idea as possible of the extent and nature of any objections to the current ratemaking formulas. We seek a better understanding of how well Great Lakes shippers, Great Lakes pilots, and the general public think those formulas fairly balance competing considerations and represent the realities of commercial shipping on the Great Lakes. Any comments we receive in response to this notice will be referred to the Great Lakes Pilotage Advisory Committee (GLPAC) for GLPAC's review and recommendations. The Act established GLPAC to advise on significant actions or policy formulation affecting Great Lakes pilotage. 46 U.S.C. 9307(d).

If you would like to comment on our ratemaking formulas, we ask that, insofar as possible, you:

- Tell us whether you are a member of the general public, an industry representative, or a pilot;
- Tell us specifically what you like or dislike about the current formulas; and
- Tell us exactly how you would revise our formulas to better serve industry, pilots, and the public—''Write your own formula''.

Dated: July 13, 2009.

Howard L. Hime,

Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. E9–17228 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 74, No. 138
Tuesday, July 21, 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of Solicitation for Members of the National Agricultural Research, Extension, Education and Economics Advisory Board

AGENCY: Research, Education and Economics, USDA.

ACTION: Solicitation for membership, extension of application deadline.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill 11 vacancies on the National Agricultural Research, Extension, Education and Economics Advisory Board.

DATES: Deadline for Advisory Board member nominations is extended to August 15, 2009.

ADDRESSES: The nominee's name, resume, completed Form AD–755, and any letters of support must be sent to the U.S. Department of Agriculture, National Research, Extension, Education, and Economics Advisory Board Office, 1400 Independence Avenue, SW., Room 3858 South Building, Washington, DC 20250–0321.

FOR FURTHER INFORMATION CONTACT: Karen Hunter, Executive Director, National Agricultural Research, Extension, Education and Economics Advisory Board, 1400 Independence Avenue SW., Room 3858 South Building, Washington, DC 20250–0321 *telephone:* 202–720–8408; *fax:* 202–720–6199; *e-mail: Karen.hunter@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 1408 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3123) was amended by the Food, Energy and Conservation Act of 2008 by deleting six members of the National Agricultural Research, Extension, Education and Economics Advisory Board, to total 25 members. Since the inception of the Advisory Board by congressional legislation in 1996, each member has represented a specific category related to farming or ranching, food production and processing, forestry research, crop and animal science, land-grant institutions, non-land grant college or university with a historic commitment to research in the food and agricultural sciences, food retailing and marketing, rural economic development, and natural resource and consumer interest groups, among many others. The Board was first appointed by the Secretary of Agriculture in September 1996 and one-third of its members were appointed for one, two, and three-year terms, respectively to allow for approximately one-third of the Board to change each year. The terms for 11 members who represent specific categories will expire September 30, 2009. Nominations for these 11 vacant categories are sought. All nominees will be carefully reviewed for their expertise, leadership, and relevance to a category. Appointments will be made for two- or three-year terms to maintain the approximate one-third change in membership each year dictated by the original legislation.

The 11 slots to be filled are:

Category A. National Farm Organization;

Category C. Food Animal Commodity Producer;

Category I. National Human Health Association;

Category M. 1994 Land Grant Institution;

Category N. NLGCA Institutions;

Category O. Hispanic-Serving Institutions;

Category Q. Transportation of Food and Agricultural Products to Domestic and Foreign Markets;

Category R. Food Retailing and Marketing Interests;

Category S. Food and Fiber Processors;

Category X. Private Sector Organization Involved in International Development;

Category Y. National Social Science Association.

Nominations are being solicited from individuals, organizations, associations, societies, councils, federations, groups, and companies that represent a wide variety of food and agricultural interests throughout the country. Nominations for one individual who fits several of the categories listed above *or* for more than one person who fits one category will be accepted. In your nomination letter, please indicate the specific membership category for each nominee. Each nominee must fill out, sign, and return a form AD–755, ''Advisory Committee Membership Background Information'' (which can be obtained from the contact person below or may be printed out from the following Web site: *http://www.ree.usda.gov/nareeeab/downloads/forms/AD-755.pdf*). All nominees will be vetted before selection.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Advisory Board take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Appointments to the National Agricultural Research, Extension, Education and Economics Advisory Board will be made by the Secretary of Agriculture.

Done at Washington, DC, this 6th day of July 2009.

Rajiv Shah,

Under Secretary, Research, Education, and Economics.

[FR Doc. E9–17298 Filed 7–20–09; 8:45 am]

BILLING CODE 3410–03–P

U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development; One Hundred and Fifty-Seventh Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and fifty-seventh meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:15 a.m. to 4 p.m. on July 29, 2009 at the National Press Club located at 529 14th St., NW., Washington, DC. The venue will be the Holeman Lounge

which is located on the 13th floor of the National Press Club. ''Higher Education: A Critical Partner in Global Agricultural Development'' continues to be the central theme of BIFAD's initiatives and the July meeting.

Dr. Robert Easter, Chairman of BIFAD, will preside over the proceedings. Dr. Easter is Interim Provost and Vice Chancellor for Academic Affairs, University of Illinois at Urbana-Champaign.

Food security, including the broadly emerging issues surrounding climate change, and the role of universities in partnership with USAID to achieve critical short and long-term development objectives is the focus of the Board's Agenda as set for the 157th meeting. The 157th meeting continues to build toward the establishment of a special strategic partnership between USAID and the university community and the launching of a university ''Brain Trust.'' Underpinning these initiatives the Board's discussion incorporates the results from its second Conference of Deans (COD II) which was held in Washington, DC on June 28 and 29, 2009. The COD II's theme was ''Building a Global Food Security Strategy: The Role of Higher Education in US International Development.''

BIFAD's morning session will begin with a panel discussion, ''BIFAD's Conference of Deans II: Perspectives on Food Security and the Role of Universities.'' University recommendations and USAID perspectives from the COD II will be presented. A second panel will compliment the first session with the discussion, ''Partners in Development: Business, Cooperatives and NGOs.'' At mid-morning congressional staff will provide updates on directions and funding implications of the Lugar-Casey and McCollum Agriculture Bills. Particular attention will be directed to the HECTARE component of the legislation. Congressional presenters will be Connie Veillette, Senior Professional Staff Member, House Foreign Relation Committee and Peter Frosch, Legislative Director, Senate Foreign Relations Committee. Time will be made available for questions from the public attending.

After the morning break the Board will hear commentary from the university community on ''USAID's Agricultural Development Plans for Afghanistan.'' Several university perspectives will be presented.

Following an executive luncheon (closed to the public) the Board will continue discussion with an emphasis on agricultural innovation and responses to the impending climate change, particularly from an agro-ecological perspective. This will be highlighted in a special panel presentation, ''Climate Proofing Agriculture: Lessons from the System of Rice Intensification.'' The presentation will be led by Norman Uphoff, Program Leader for Sustainable Rice Intensification, Cornell University. USDA's response will be provided by Carol Kramer-LeBlanc, Director, Sustainable Development Program, USDA/CREES.

Shifting to a regional focus, USAID's Latin American Bureau will present to the Board key aspects of its trade-led strategy for agricultural diversification to promote agriculture and food security, ''Optimizing the Economic Growth and Poverty Reduction Benefits of CAFTA–DR.'' This USAID presentation will be delivered by a representative from the Office of Sustainable Development, Bureau for Latin America.

Operational and management issues pertaining to the Board and linked to implementation of Title XII will be covered through several reports. First, the Board's sub-committee, Strategic Partnership for Agricultural Research and Education (SPARE), will report on its February 2009 meeting held at the University of Florida in Gainesville. Topics to be covered are SPARE's discussion on the Casey-Lugar Bill, specifically on how the Agency could implement the HECTARE portion of the legislation, and issues related to scaling-up agricultural programming in view of the Agency's increased efforts in Afghanistan and Pakistan. The concluding report will be an update from USAID's Office of Acquisitions and Assistance (OAA) on USAID's rule regarding the use of key subcontractors by prime contractors; particularly with regard to universities as subcontractors.

The Board meeting is open to the public. The Board welcomes open dialogue to promote greater focus on critical issues facing USAID, the role of universities in development, and applications of U.S. scientific, technical and institutional capabilities to international agriculture. **Note on Public Comments:** Due to time constraints public comments to the Board will be limited to two (2) minutes to accommodate as many as possible. The comments must be submitted ahead of the meeting and they must be in writing.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Dr. Ronald S. Senykoff, Executive Director and Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Development Partners, 1300 Pennsylvania Avenue, NW., Room 6.7–153, Washington, DC, 20523–2110 or telephone him at (202) 712–0218 or fax (202) 216–3124.

Ronald S. Senykoff,

Executive Director and USAID Designated Federal Officer for BIFAD, Office of Development Partners, U.S. Agency for International Development.

[FR Doc. E9–17273 Filed 7–20–09; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 0906181062–91065–01]

Amendments to Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of amendments.

SUMMARY: National Institute of Standards and Technology (NIST) announces amendments to NIST's Alternative Personnel Management System (APMS). The amendments change the performance management system of the Senior Professional (ST) employees at NIST.

DATES: This notice is effective on July 21, 2009.

FOR FURTHER INFORMATION CONTACT: For questions or comments, please contact Susanne Porch at the National Institute of Standards and Technology, (301) 975–2487.

SUPPLEMENTARY INFORMATION:

Background

In accordance with Public Law 99–574, the NIST Authorization Act for Fiscal Year 1987 (15 U.S.C. 275 note), the Office of Personnel Management (OPM) approved a demonstration project plan, ''Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology (NIST),'' and published the plan in the **Federal Register** on October 2, 1987 (52 FR 37082). The project plan has been amended twice to clarify certain NIST authorities (54 FR 21331, May 17, 1989, and 55 FR 39220, September 25, 1990). The project plan and subsequent amendments were consolidated in the final APMS plan, which became permanent on October 21, 1997, (62 FR 54604). NIST published an amendment on May 6, 2005 (70 FR 23996), which became permanent on

June 6, 2005. NIST published an amendment on July 15, 2008 (FR 73 40502), which became permanent on October 1, 2008.

The plan provides for modifications to be made as experience is gained, results are analyzed, and conclusions are reached with regard to the working efficacy of the system. This notice formally amends the APMS plan to exclude NIST ST employees from the APMS performance management system and to include these employees in the Department of Commerce's 5-level performance management system. NIST is making this modification because it has determined that ST employees should be evaluated in the same manner as all other Department of Commerce ST employees, which is under the 5-level performance management system.

Dated: July 16, 2009.

Patrick Gallagher,

Deputy Director.

Table of Contents

I. Executive Summary
II. Basis for APMS Plan Modification
III. Changes to the APMS Plan

I. Executive Summary

The National Institute of Standards and Technology (NIST) is removing its Senior Professional (ST) employees from the Alternative Personnel Management System (APMS) performance management system. Instead, ST employees will be covered under the Department of Commerce's 5-level performance management system.

This amendment modifies the July 15, 2008 (73 FR 40502) amendment. Specifically, NIST will exclude ST employees from the performance management piece of the APMS. NIST ST employees will be covered under the Department of Commerce's 5-level performance management system.

NIST will continually monitor the effectiveness of this amendment.

II. Basis for APMS Plan Modification

NIST determined that ST employees should be evaluated in the same manner as all other Department of Commerce ST employees, which is under the 5-level performance management system.

III. Changes in the APMS Plan

The APMS at the NIST, published in the **Federal Register** on October 21, 1997 (62 FR 54604), as amended May 6, 2005 (70 FR 23996), and July 15, 2008 (73 FR 40502) is amended as follows:

1. *Senior Executive Service (SES) and ST–3104 Positions* (62 FR 54607) is replaced with the following: The personnel systems for SES positions (see 5 U.S.C. 3131–3136 and 5 U.S.C. 5381–5385) did not change for the NIST APMS. SES classification, staffing, compensation, performance appraisal, awards and reduction in force are based on standard SES methods. ST–3104 positions (see 5 U.S.C. 3104 and 5376) are covered under the Department of Commerce's 5-level performance management system. Classification, staffing and compensation, however, did not change. Neither SES nor ST–3104 employees were subject to the pro rata share payouts upon conversion to the NIST APMS system. Pay adjustments for their positions under the NIST APMS are carried out in accordance with existing Federal rules pertaining to SES and ST–3104 pay adjustments.

2. Performance Evaluation and Rewards, *Coverage* (62 FR 54611) is amended as follows: All employees covered by the NIST APMS are covered by the APMS performance evaluation and rewards system, except that NIST may remove from the system any position not filled by career or career–conditional appointment. ST–3104 employees have their performance evaluated under the Department of Commerce's 5-level performance management system and may receive bonuses under that system. Members of the Senior Executive Service remain under the DOC–NIST SES performance appraisal, pay and bonus system.

[FR Doc. E9–17274 Filed 7–20–09; 8:45 am]
BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review: Certain Tissue Paper Products from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brandon Custard, 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) 482–1766 or (202) 482–1823, respectively.

Background

On April 6, 2009, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain tissue paper products from the People's Republic of China (''PRC''), covering the period March 1, 2007, through February 29, 2008. *See Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of the 2007–2008 Administrative Review and Intent Not to Revoke Order in Part*, 74 FR 15449 (April 6, 2009). The current deadline for the final results in this review is August 4, 2009.

Extension of Time Limits for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of the review of an antidumping duty order within 120 days after the date on which the preliminary results is published in the **Federal Register**. If it is not practicable to complete the review within this time period, the Department may extend that 120-day period to 180 days.

Having provided the interested parties more time to submit publicly available information and case and rebuttal briefs for consideration in the final results of this review, the Department finds that it is not practicable to complete the final results of this review within the current time frame, as it requires additional time to properly analyze the data and arguments submitted by the interested parties.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the final results of this review until October 5, 2009, which is the next business day after 180 days after the date on which the notice of the preliminary results was published in the **Federal Register**.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 14, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–17299 Filed 7–20–09; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number 0906181061–91066–01]

Correction to Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; correction.

SUMMARY: National Institute of Standards and Technology (NIST) published a document in the **Federal Register** on July 15, 2008 (73 FR 40500) setting forth modifications to its Alternative Personnel Management System (APMS). The document erroneously contained ''I'' in two places. The correction set forth in this notice clarifies that ''I'' is a unit of salary increase, not a percentage.

DATES: This notice is effective on July 21, 2009.

FOR FURTHER INFORMATION CONTACT: For questions or comments, please contact Amy K. Cubert at the National Institute of Standards and Technology, (301) 975–3006.

Correction

In FR Doc. E8–16066, published on July 15, 2008 (73 FR 40500), on page 40501, beginning in the first column, the fourth paragraph under the heading ''II. Basis for APMS Plan Modification,'' as follows:

Performance pay increases will continue to be based on the annually determined percentage of the mid-point salary for each pay band in the career path. When the percentage is applied to the mid-point salary in each pay band, the resulting dollar amount is the unit of salary increase or ''I'' for that pay band and career path.

Percentages may differ by pay band and career path. The percentage used for any given career path and band will apply system-wide, except that the Director may authorize a particular operating unit to use a lower percentage for reasons related to solvency.

Dated: July 16, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–17269 Filed 7–20–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 92–8A001]

Export Trade Certificate of Review

ACTION: Notice of Application (#92–8A001) To amend an export trade certificate of review previously issued to Aerospace Industries Association of America, Inc.

SUMMARY: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Acting Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, DC 20230, or transmitted by E-mail at *oetca@ita.doc.gov.* Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 92–8A001.''

The original Certificate for Aerospace Industries Association of America, Inc. was issued on April 10, 1992 (57 FR 13707, April 17, 1992) and last amended on November 12, 2003 (68 FR 66074, November 25, 2003).

A summary of the application for an amendment follows.

Summary of the Application

Applicant: Aerospace Industries Association of America, Inc. (''AIA''), 1000 Wilson Boulevard, Suite 1700, Arlington, Virginia 22209.

Contact: Matthew F. Hall, Counsel, *Telephone:* (202) 862–9700.

Application No.: 92–8A001.

Date Deemed Submitted: July 7, 2009.

Proposed Amendment: AIA seeks to amend its Certificate to:

1. Delete the following companies as Members of the Certificate: AAI Corporation, Hunt Valley, MD; Argo-Tech Corporation, Cleveland, OH; AstroVision International, Inc., Bethesda, MD; Aviall, Inc., Dallas, TX; B.H. Aircraft Company, Inc., Ronkonkoma, NY; Ball Aerospace & Technologies Corporation, Boulder, CO; Celestica Corporation, Toronto, Ontario; Crane Aerospace & Electronics, Lynwood, WA; Cubic Corporation, San Diego, CA; Dy 4 Systems Limited, Kanata, Ontario; EDO Corporation, New York, NY; Federation, Inc., Centennial, CO; GKN Aerospace Services, Farnham, Surrey, UK; Kistler Aerospace Corporation, Kirkland, WA; 3M Company, St. Paul, MN; Martin-Baker America, Incorporated, Arlington, VA; MatrixOne Inc., Westford, MA; MD Helicopters, Inc., Mesa, AZ; Orbital Sciences Corporation, Dulles, VA; PerkinElmer, Inc., Wellesley, MA; Silicon Graphics, Inc., Mountain View, CA; Smiths Aerospace Actuation Systems, Duarte, CA; Spectrum Astro Inc., Gilbert, AZ; Stellex Aerostructures, Inc., Lebanon, NJ; Swales Aerospace, LLC, Beltsville, MD; Teleflex Inc., Plymouth Meeting, PA; Titan Corporation, San Diego, CA; Triumph

Group Inc., Wayne, PA; and United Defense, L.P., Arlington, VA.

2. Add the following companies as new Members of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.(l)): AAR Corp., Wood Dale, IL; Accenture, Hartford, CT (controlling entity: Accenture, Ltd., Hamilton Bermuda); Airlaunch LLC, Kirkland, WA; Allfast Fastening Systems, City of Industry, CA; AMSAFE Aviation, Phoenix, AZ; AMT II Corporation, New York, NY; Aurora Flight Sciences Corporation, Manassas, VA; AUSCO, Inc., Port Washington, NY; B/E Aerospace, Inc., Wellington, FL; Belcan Corporation, Cincinnati, OH; Best Foam Fabricators, Inc., Chicago, IL; BreconRidge Corporation, Ottawa, Ontario; CAE USA Inc., Tampa, FL (controlling entity: CAE Inc., Montreal, Canada); Chromalloy Power Services Corporation, San Antonio, TX (controlling entity: Carlyle Group, Washington, DC); Click Bond, Inc., Carson City, NV (controlling entity: Physical Systems, Inc., Carson City, NV); Click Commerce, Inc., Chicago, IL; Cobham, Arlington, VA (controlling entity: Cobham, plc, Winborne, Dorset, United Kingdom); DynCorp International LLC, Falls Church, VA; Eaton Aerospace Operations, Irvine, CA (controlling entity: Eaton Corporation, Cleveland, OH); Eclipse Aviation Corporation, Albuquerque, NM; Electronic Data Systems Corporation, Plano, TX (controlling entity: Hewlett Packard, Palo Alto, CA); Erickson Air-Crane Inc., Portland, OR; ESI North America, Bloomfield Hills, MI (controlling entity: ESI Group, Paris, France); Flextronics International USA, Inc., San Jose, CA (controlling entity: Flextronics International, Ltd., Singapore); Flight Safety International, Inc., Flushing, NY (controlling entity: Berkshire Hathaway Inc., Omaha, NE); FTG Circuits, Inc., Chatsworth, CA (controlling entity: FTG Group Corporation, Toronto, Canada); Groen Brothers Aviation, Inc., Salt Lake City, UT; IBM Corporation, Armonk, NY; LAI International, Inc., Scottsdale, AZ (controlling entity: Spell Capital Partners, LLC, Minneapolis, MN); LMI Aerospace, Inc., St. Charles, MO; Lord Corporation, Cary, NC; Marotta Controls, Inc., Montville, NJ; McKechnie Aerospace, Irvine, CA; Micro-Coax, Inc., Pottstown, PA; Micro-Tronics, Inc., Tempe, AZ; MicroSat Systems, Inc., Littleton, CO (controlling entity: Sierra Nevada Corporation, Sparks, NV); Natel Engineering Company, Inc., Chatsworth, CA; National Machine Group, Stow, OH; National Technical Systems, Inc., Calabasas, CA; Naverus, Inc., Kent, WA; The NORDAM Group, Inc., Tulsa, OK; NYLOK Corporation, Macomb, MI (controlling entity: Berkshire Hathaway, Inc., Omaha, NE); Oracle USA, Inc., Redwood Shores, CA (controlling entity: Oracle Corporation, Redwood Shores, CA); Pall Aeropower Corporation, New Port Richey, FL (controlling entity: Pall Corporation, East Hills, NY); Pinkerton Government Services, Inc., Springfield, VA (controlling entity: Securitas Security Services, USA, Parsippany, NJ); PPG Aerospace, Sylmar, CA (controlling entity: PPG Industries, Pittsburgh, PA); Science Applications International Corporation, San Diego, CA; Siemens PLM Software, Plano, TX (controlling entity: Siemens AG, Munich, Germany); SITA, Atlanta, GA (controlling entity: SITA, Geneva, Switzerland); SM&A, Newport Beach, CA; Southern California Braiding Company, Inc., Bell Gardens, CA; Space Exploration Technologies Corporation, Hawthorne, CA; Sparton Corporation, Jackson, MI; Spirit AeroSystems, Inc., Wichita, KS; TechniGraphics, Inc., Wooster, OH; Timken Aerospace Transmissions, LLC—Purdy Systems, Manchester, CT (controlling entity: The Timken Company, Canton, OH); Vibro-Meter, Inc., Manchester, NH (controlling entity: Meggitt PLC, Christchurch, Dorset, United Kingdom); and WIPRO Technologies, Beaverton, OR (controlling entity: WIPRO Technologies, Bangalore, India).

3. Change the listing of the following Members: ''Analytical Graphics, Inc., Malvern, PA'' to the new listing ''Analytical Graphics, Inc., Exton, PA''; ''BAE Systems North America, Inc., Rockville, MD'' to the new listing ''BAE Systems, Inc., Rockville, MD''; ''B&E Tool Company, Inc., Southwick, MA'' to the new listing ''B&E Group, LLC, Southwick, MA''; ''Curtiss-Wright Corporation, Lyndhurst, NJ'' to ''Curtiss-Wright Corporation, Parsippany, NJ''; ''E. I. duPont de Nemours & Company, Wilmington, DE'' to ''Dupont Company, New Castle, DE''; ''General Atomics Aeronautical Systems, Inc., San Diego, CA'' to ''General Atomics Aeronautical Systems, Inc., Poway, CA''; ''HEICO, Miami, FL'' to ''HEICO Corporation, Hollywood, FL''; ''ITT Industries, Inc., McLean, VA'' to ''ITT Corporation, White Plains, NY''; ''L–3 Communications Holdings, Inc., New York, NY'' to ''L–3 Communications Corporation, New York, NY''; ''Raytheon Corporation, Lexington, MA'' to ''Raytheon Company, Waltham, MA''; and ''Woodward Governor Company, Rockford, IL'' to ''Woodward Governor Company, Fort Collins, CO''.

Dated: July 16, 2009.

Jeffrey Anspacher,

Acting Director, Office of Competition and Economic Analysis.

[FR Doc. E9–17268 Filed 7–20–09; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non–Alloy Steel Pipe from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Maryanne Burke or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5604 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2008, the Department of Commerce (the Department) received a timely request from interested party U.S. Steel Corporation to conduct an administrative review of the antidumping duty order on certain circular welded non–alloy steel pipe from Mexico.[1] On December 24, 2008, the Department published a notice of initiation of this administrative review, covering the period of November 1, 2007 to October 31, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008). The current deadline for the preliminary results of this review is August 2, 2009.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section

[1] Because the last day of the anniversary month of this order, November 30, 2008, fell on a Sunday, petitioners filed their request for review on the next business day, Monday, December 1, 2008.

751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

The Department finds it is not practicable to complete the preliminary results of this review within the original time frame because we require additional time to analyze Tuberia Nacional, S.A. de C.V.'s (TUNA's) claim that it did not have exports, sales or entries of subject merchandise to the United States during the period of review. *See* TUNA's ''no shipment'' letter to the Department, dated January 23, 2009. In light of our ongoing changed circumstances review, more time is also necessary to consider the relationship between Ternium Mexico, S.A. de C.V. and Hylsa, S.A. de C.V, a mandatory respondent in the instant review. *See Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non–Alloy Steel Pipe and Tube from Mexico*, 74 FR 28883 (June 18, 2009). Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than November 30, 2009, which is 365 days from the last day of the anniversary month. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: July 15, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–17278 Filed 7–20–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Rescission of Countervailing Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 21, 2009.

SUMMARY: The Department of Commerce (the ''Department'') is rescinding the countervailing duty (''CVD'') changed circumstances review of stainless steel sheet and strip in coils (''S4'') from the Republic of Korea (''Korea''), as INI Steel Company (''INI'') was found to be the successor–in-interest to Inchon Iron and Steel Co., Ltd. (''Inchon'') in other segments of this proceeding.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Howard Smith, AD/CVD Enforcement Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4162 and (202) 482–5193.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 2001, the Department initiated the instant changed circumstances review to examine whether INI was the successor–in-interest to Inchon. *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Notice of Initiation of Changed Circumstances Countervailing Duty Administrative Review*, 66 FR 49639 (September 28, 2001). The Department published its preliminary results in this changed circumstances review on June 3, 2002, and preliminarily determined that Inchon was the successor–in-interest to INI. *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Notice of Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review*, 67 FR 38257 (June 3, 2002) (''*Preliminary Results*''). We gave interested parties 10 days to comment on the *Preliminary Results*. The Department received no comments.

Scope of the Order

The products subject to the order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated), provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to the order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00,7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of the order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note''1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of the order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between

0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of the order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.'' [1]

Certain electrical resistance alloy steel is also excluded from the scope of the order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (''ASTM'') specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.'' [2]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of the order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.'' [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 HI–C.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''

Rescission of Changed Circumstances Review

Since the publication of the *Preliminary Results*, the Department has completed a number of administrative reviews of the order. *See, e.g., Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip From the Republic of Korea*, 68 FR 13267 (March 19, 2003) (''*Second Review*''); *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004) (''*Third Review*''), covering calendar years 2000 and 2001, respectively.

In both of these segments of the proceeding, the Department's determination reflected INI's status as the successor–in-interest to Inchon. Specifically, in the *Second Review*, 68 FR at 13269, which examined Inchon, the Department stated in the ''Final Results of Review'' section of the notice: ''As of April 1, 2001, Inchon, changed its name to INI. Thus, for all of Inchon's shipments of the subject merchandise from the producers/exporters under review, entered, or withdrawn from warehouse, for consumption on or after April 1, 2001, we will instruct customs to assign Inchon's cash deposit to INI.'' In the Third Review, the Department stated ''{f}or the period January 1, 2001

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

through December 31, 2001, {which covers the time period when the name change took place} we determine the net subsidy for INI/Sammi to be 0.55 percent *ad valorem*. This rate will also apply to shipments by Inchon entered or withdrawn from warehouse for the period January 1, 2001 through December 31, 2001.'' *See Third Review*, 69 FR at 2115 (unchanged in *Amended Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 7419 (February 17, 2004)). Since the Department's decisions in these administrative reviews reflect INI's status as the successor–in-interest to Inchon, there is no need for the Department to make a determination on this issue in the context of a CVD changed circumstances review. The Department noted this fact in the changed circumstances review of the CVD order on S4 from Korea that was initiated on June 30, 2006, to examine whether Hyundai Steel Company was the successor–in-interest to INI. *See Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Initiation of Countervailing Duty Changed Circumstances Review*, 71 FR 37541 (June 30, 2006) (''In September 2001 and June 2002, respectively, the Department initiated and issued the preliminary results of a changed circumstances review to determine whether INI was entitled to Inchon's cash deposit rate.[5] In the *Second Review* the Department determined to assign Inchon's cash deposit rate to INI, thereby eliminating the need to complete the changed circumstances review.[6] ''). Therefore, we are rescinding the instant CVD changed circumstances review.

Administrative Protective Orders

This notice also serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 C.F.R. § 351.305(a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

This notice is in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 C.F.R. § 351.221(c)(3) and 19 CFR § 351.216.

Dated: July 13, 2009.

Ronald K. Lorentzen ,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–17280 Filed 7–20–09; 8:45 am]

BILLING CODE 3510–DS–S

[5] *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Notice of Initiation of Changed Circumstances Countervailing Duty Administrative Review*, 66 FR 49639 (September 28, 2001), and *Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Notice of Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review*, 67 FR 38257 (June 3, 2002).

[6] *See* Second Review Decision Memorandum at section ''C: Name Changes.''

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on a Commercial Availability Request under the U.S.-Bahrain Free Trade Agreement

July 15, 2009.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for modification of the U.S.-Bahrain Free Trade Agreement (USBFTA) rules of origin for certain compacted, single, ring spun cotton yarns.

SUMMARY: On April 1, 2009, the Government of the United States received a request from the Government of Bahrain for consultations under Article 3.2.3 of the USBFTA. Bahrain is seeking agreement to revise the rules of origin for certain bedding, curtains, bed covers, and pillow covers to address availability of supply of certain compacted ring spun cotton yarns in the territories of the Parties. On July 7, 2009, the United States received additional information from Bahrain to address certain issues with respect to the April 1 request, including identification that the subject request is for certain compacted, single, ring spun cotton yarns classified in subheadings 5205.27.0020 and 5205.28.0020 of the Harmonized Tariff Schedule of the United States (HTSUS). The President may proclaim a modification to the USBFTA rules of origin for textile and apparel products after reaching an agreement with the Government of Bahrain on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether certain compacted, single, ring spun cotton yarns of HTSUS 5205.27.0020 and 5205.28.0020 can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by August 20, 2009 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jim Bennett, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 202 (j)(2)(B)(i) of the United States - Bahrain Free Trade Agreement Implementation Act (19 U.S.C. 3805 note) (USBFTA Implementation Act); Executive Order 11651 of March 3, 1972, as amended.

Background

Under the USBFTA, the parties are required to progressively eliminate customs duties on originating goods. See Article 2.3.2. The USBFTA provides that, after consultations, the parties may agree to revise the rules of origin for textile and apparel products to address issues of availability of supply of fibers, yarns, or fabrics in the free trade area. See Article 3.2.3 of the USBFTA. In the consultations, each party must consider data presented by the other party showing substantial production of the good. Substantial production has been shown if domestic producers are capable of supplying commercial quantities of the good in a timely manner. See Article 3.2.4 of the USBFTA.

The USBFTA Implementation Act provides the President with the authority to proclaim modifications to the USBFTA rules of origin as are necessary to implement the agreement after complying with the consultation and layover requirements of Section 104 of the USBFTA Implementation Act. See Section 202(j)(2)(B)(i) of the USBFTA Implementation Act. Executive Order 11651 established CITA to supervise the implementation of textile trade agreements and authorizes the Chairman of CITA to take actions or recommend that the United States take actions necessary to implement textile trade agreements. 37 FR 4699 (March 4, 1972).

On April 1, 2009, the Government of the United States received a request from the Government of Bahrain, alleging that certain compacted ring spun cotton yarns cannot be supplied by the domestic or Bahraini industry in commercial quantities in a timely manner and requesting that the United States consider whether the USBFTA rule of origin for certain bedding, curtains, bed covers, and pillow covers, classified under HTSUS subheadings 6302.21.9010, 6302.21.9020, 6302.31.5010, 6302.31.5020, 6302.31.9010, 6302.31.9020, 6303.91.0020, 6304.92.0000, 6307.90.8945, 6307.90.8985, and 6307.90.8995, should be modified to allow the use of non-U.S. and non-

Bahraini certain compacted ring spun cotton yarns. On July 7, 2009, the United States received additional information from Bahrain to address certain issues with respect to the April 1 request, including identification that the subject request is for certain compacted, single, ring spun cotton yarns classified in subheadings 5205.27.0020 and 5205.28.0020 of the HTSUS.

CITA is soliciting public comments regarding this request, particularly with respect to whether certain compacted, single, ring spun cotton yarns described above can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be received no later than August 20, 2009. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3001 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E9–17277 Filed 7–20–09; 8:45 am]

BILLING CODE 3510–DS

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission (Commission).

DATES AND TIME: Tuesday, July 28, 2009, Wednesday, July 29, 2009 and Wednesday, August 5, 2009, commencing each day at 9 a.m. and ending at 1 p.m.

PLACE: Three Lafayette Center, 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

STATUS: Open.

MATTERS TO BE CONSIDERED: Public hearings to examine Federal position limits, particularly as related to the energy markets, and hedge exemptions on regulated futures exchanges, derivatives transaction execution facilities and electronic trading facilities with respect to a significant price discovery contract.

CONTACT PERSONS AND ADDRESSES: Written materials should be mailed to the Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW., Washington, DC 20581, attention Office of the Secretariat; transmitted by facsimile at 202–418–5521; or transmitted electronically to [*secretary@cftc.gov*].

Reference should be made to ''position limits and hedge exemptions.'' For substantive questions, please contact Sauntia Warfield, 202–518–5084.

SUPPLEMENTARY INFORMATION: The Commission is undertaking a review of issues related to Federal position limits and hedge exemptions on regulated futures exchanges, derivatives transaction execution facilities and electronic trading facilities with respect to a significant price discovery contract. In furtherance of that review, the Commission hereby announces that it will hold public hearings on Tuesday, July 28, 2009, Wednesday, July 29, 2009 and Wednesday, August 5, 2009 from 9 a.m. to 1 p.m. each day, at the Commission headquarters in Washington, DC. At these hearings the Commission will have oral presentations by panels of witnesses representing segments of the futures market participants and academics. Members of Congress also are expected to present their views.

These hearings will generally focus on a number of issues, including: the application of federal speculative position limits to address the burdens of excessive speculation; how such limits should be structured; how such limits should be set; the aggregation of positions across different markets; and the types of exemptions, if any, that should be permitted.

A transcript of the hearing will be made and entered into the Commission's public comment files, which will remain open for the receipt of written comments until August 12, 2009.

Issued in Washington, DC, on July 17, 2009, by the Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E9–17421 Filed 7–17–09; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notice of Consultation Pursuant to Section 106 of the CPSIA; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: Section 106 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) requires the Consumer Product Safety Commission (''CPSC'' or ''Commission'') to examine and assess, in consultation with consumer groups, juvenile product manufacturers, and independent child product engineers and experts, the effectiveness of ASTM F963–07, ''Standard Consumer Safety Specification for Toy Safety,'' or its successor standard (except for section 4.2 and Annex 4), as it relates safety requirements, safety labeling requirements, and test methods related to: (1) Internal harm or injury hazards caused by the ingestion or inhalation of magnets in children's products; (2) toxic substances; (3) toys with spherical ends; (4) hemispheric-shaped objects; (5) cords, straps, and elastics; and (6) battery-operated toys. This notice is issued to facilitate the receipt of any written submissions on these matters as part of the consultative process required by section 106 of the CPSIA. The Commission invites comments concerning the issues discussed in this notice.

DATES: Comments and submissions in response to this notice must be received by August 20, 2009.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0047, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jonathan Midgett, PhD, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Suite 600, Bethesda, MD 20814; telephone (301) 504–7692; e-mail *jmidgett@cpsc.gov*.

SUPPLEMENTARY INFORMATION: The CPSIA was enacted on August 14, 2008. Section 106 of the CPSIA, ''Mandatory Toy Safety Standards,'' made ASTM International Standard F963–07, ''Standard Consumer Safety Specification for Toy Safety'' (ASTM F963), as it existed on August 14, 2008 (except for section 4.2 and Annex 4 or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute), into mandatory consumer product safety standards issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058).

On February 17, 2009, ASTM proposed revisions in F963–08, a successor standard, for the Commission's consideration. On May 13, 2009, the Commission voted to accept all of the proposed revisions in ASTM F963–08 except the revision that would have omitted section 4.27, which addresses toy chests, from the standard. The revisions in F963–08 that were accepted by the Commission will become mandatory consumer product safety standards on August 17, 2009.

Section 106(b)(1) of the CPSIA requires the Commission, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, to examine and assess the effectiveness of ASTM F963 or its successor standard (except for section 4.2 and Annex 4), as it relates safety requirements, safety labeling requirements, and test methods related to:

(1) Internal harm or injury hazards caused by the ingestion or inhalation of magnets in children's products;

(2) Toxic substances;

(3) Toys with spherical ends;

(4) Hemispheric-shaped objects;

(5) Cords, straps, and elastics; and

(6) Battery-operated toys.

Section 106(b)(2) of the CPSIA requires the Commission to promulgate consumer product safety standards that take into account other children's product safety rules and are more stringent than such standards if the Commission determines that more stringent standards would further reduce the risk of injury associated with such products.

As part of its efforts to comply with section 106 of the CPSIA, the Commission is issuing this notice in the **Federal Register** to invite public comment concerning the effectiveness of ASTM F963–08 in the following areas:

1. Hazardous Magnets—The requirements for toys with magnets address recent incidents involving small high-attraction-force magnets. Ingestion of these magnets can lead to perforations of the gut wall, causing infection, sepsis, or even death, as the magnets attract to each other through different sections of the intestines. To minimize the likelihood of children swallowing hazardous magnets, ASTM F963–08:

a. Defines hazardous magnets and hazardous magnetic components as those being small parts and containing a magnet with a Flux Index of 50 or greater.

b. Specifies a method for determining a magnet's Flux Index using a gauss meter.

c. Prohibits magnetic toys for children up to age 14 from containing hazardous magnets or magnetic components.

d. Specifies use and abuse test methods for magnetic toys that are not small parts, but have embedded hazardous magnets, to ensure that hazardous magnets will not liberate from the toy during normal usage. This test method includes cyclic and impact testing.

e. Allows hazardous magnets and hazardous magnetic components in hobby, craft and science kits for children over 8 years of age, provided that they contain a hazardous magnet warning.

f. Does not require a hazardous magnet warning on magnetic toys that are not small parts, but have embedded hazardous magnets, provided that they pass the specified use and abuse test methods.

2. Toxic Substances—The requirements address the risks of exposure to toxic substances. To minimize the likelihood of exposure to toxic substances, ASTM F963–08 addresses the following areas:

a. Federally prohibited hazardous substances;

b. Food and food packaging;

c. Food additives;

d. Toys in contact with food;

e. Ceramicware, lead and cadmium contamination;

f. Cosmetics;

g. Paint and similar coatings;

h. Liquids, pastes, putties, gels and powders;

i. Stuffing materials; and

j. DI (2-ethylhexyl) phthalate (DEHP) (also known as dioctyl phthalate (DOP)).

3. Toys with spherical ends—The requirements address potential impaction hazards for children up to 48 months with certain toys containing spherical ends. To minimize the likelihood of impaction hazards, ASTM F963–08:

a. Requires toys weighing less than 1.1-pounds for children up to 18 months that incorporate spherical, hemispherical, or flared ends and are attached to a shaft, handle or support that has a smaller cross section to meet the specified dimensional requirements.

b. Requires toys weighing less than 1.1-pounds for children 18 to 48 months having nail, screw or bolt shapes with spherical or hemispherical ends attached to a shaft or handle to meet the specified dimensional requirements.

c. Requires preschool play figures for children less than 3 years of age with a round, spherical, or hemispherical end and tapered neck attached to a cylindrical shape and an overall length of 2.5-inches or less to meet the specified dimensional requirements.

4. Hemispheric-shaped objects—The requirements address potential asphyxiation hazards with ''cup'' shaped objects that have the potential to fit on a child's face and allow a vacuum to be formed. To minimize the likelihood of these types of hazards, ASTM F963–08 requires certain toy cup, bowl or half-egg shaped objects to meet certain specified dimensional and opening requirements.

5. Cords, straps and elastics—The requirements address potential entanglement and strangulation hazards associated with cords, straps and elastics. To minimize the likelihood of these types of hazards, ASTM F963–08:

a. Requires toys for children less than 18 months with straps or elastics attached or included to be less than 12-inches in the free-state and under a 5-pound load.

b. Requires cords, straps and elastics that can form a loop to not admit a head probe when tested under the specified conditions.

c. Requires cords, straps and elastics that admit the base of the head probe to contain breakaway features that release at less than 5-pounds when tested in accordance with the specified conditions.

d. Requires certain toys with self-retracting pull cords for children less than 18 months of age to not retract under load in accordance with the specified conditions.

e. Requires cords, straps and elastics greater than 12-inches long for children less than 36 months of age to not contain beads or other attachments that could tangle to form a loop.

f. Requires toy bags for children up to 18 months of age that have a perimeter opening greater than 14-inches to not have a drawstring or cord as a means of closing.

6. Battery-Operated Toys—The requirements of F963–08 address the following areas to minimize the risk associated with battery operated toys:

a. Battery overheating;

b. Leakage;

c. Explosion and fire; and

d. Swallowing of batteries.

7. Comments may also be submitted on any other section of ASTM F963–08. Please note that all comments should be restricted to children's toy safety.

A link to ASTM F963–07 and F963–08, in a ''read-only'' format, may be viewed on ASTM's Web site at *http://www.astm.org/cpsc.htm*.

Comments submitted must follow the directions provided in the **ADDRESSES** section of this notice. All comments and submissions should be received no later than August 20, 2009.

Dated: July 14, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–17198 Filed 7–20–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0152]

Federal Acquisition Regulation; Submission for OMB Review; Service Contracting

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning service contracting. A request for public comments was published in the **Federal Register** at 74 FR 18718 on April 24, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 20, 2009.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Contract Policy Division, GSA, (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement implements the statutory requirements of Sec. 834, Public Law 101–510, concerning uncompensated overtime. The coverage requires that offerors identify uncompensated overtime hours and the uncompensated overtime rate for direct charge Fair Labor Standards Act–exempt personnel. These overtime hours and rates are included in the offeror's proposals and their subcontractor's proposals for procurements valued at or above the simplified acquisition threshold. This permits Government contracting officers to ascertain cost realism of proposed labor rates for professional employees.

B. Annual Reporting Burden

Number of Respondents: 19,906.

Responses Per Respondent: 1.

Annual Responses: 19,906.

Average Burden Per Response: 30 minutes.

Total Burden Hours: 9,953.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, Room 4041, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0152, Service Contracting, in all correspondence.

Dated: July 15, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–17271 Filed 7–20–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0149]

Federal Acquisition Regulation; Submission for OMB Review; Subcontract Consent

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

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning subcontract consent. A request for public comments was published in the **Federal Register** at 74 FR 18717, on April 24, 2009. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of

information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before August 20, 2009.

ADDRESSES: Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Acquisition Policy Division, GSA (202) 501–0044 or via e-mail to *Rhonda.cundiff@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective to consent to subcontract, as discussed in FAR Part 44, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds, and complies with Government policy when subcontracting. The consent package provides the administrative contracting officer a basis for granting, or withholding consent to subcontract.

B. Annual Reporting Burden

Number of Respondents: 4,252.

Responses Per Respondent: 3.61.

Total Responses: 15,349.

Average Burden Hours Per Response: .87.

Total Burden Hours: 13,353.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0149, Subcontract Consent, in all correspondence.

Dated: July 15, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–17272 Filed 7–20–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Enhancing the Health and Wellness of Individuals With Arthritis; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–9.

DATES: *Applications Available:* July 21, 2009.

Date of Pre-Application Meeting: July 21, 2009.

Deadline for Transmittal of Applications: September 4, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities.

Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/resprogram.html#RRTC.*

Priorities: NIDRR has established two absolute priorities and one invitational priority for this competition.

Absolute Priorities: The *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). The *Enhancing the Health and Wellness of Individuals with Arthritis* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register.**

For FY 2009, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Rehabilitation Research and Training Centers (RRTC) Requirements and *Enhancing the Health and Wellness of Individuals with Arthritis.*

Note: The full text of each of these priorities is included in its notice of final priorities in the **Federal Register** and in the applicable application package.

Invitational Priority: For FY 2009, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications. Under this competition we are particularly interested in applications that address the following priority:

Projects that are designed to contribute to improved rehabilitation interventions to reduce the symptoms, functional limitations, and barriers to employment associated with osteoarthritis among working-age adults with pre-existing disabilities. We are particularly interested in projects that focus on one or more of the following interventions recommended by the joint Arthritis-CDC Osteoarthritis Intervention Working Group: physical activity, muscle strengthening, self-management education, weight management and nutrition, and injury prevention.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $700,000.

Maximum Award: We will reject any application that proposes a budget exceeding $700,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.133B–9.

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 person or team listed under *Accessible Format* in section VIII of this notice.

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. We recommend that you limit Part III to the equivalent of no more than 125 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. Single spacing may be used for 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 recommended 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, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: July 21, 2009.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 21, 2009. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza (PCP), Room 6029, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

Deadline for Transmittal of Applications: September 4, 2009.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. 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 in this notice.

6. *Other Submission Requirements:*

Applications for grants under this competition 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 Rehabilitation Research and Training Centers (RRTCs)—CFDA Number 84.133B–9 must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

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.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date.

Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• 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: The 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.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

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 e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; 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: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6030 PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133B–9), 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 84.133B–9), 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 grant 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 competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in determining the merits of an application are as follows—

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of the proposed measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section V.2. *Review and Selection Process* is voluntary, except where required by the selection criteria listed in the application package.

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 *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6029, PCP, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

If you use a TDD, call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

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 Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services,

to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: July 15, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–17232 Filed 7–20–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Enhancing the Health and Wellness of Individuals With Neuromuscular Diseases

Notice inviting applications for new awards for fiscal year (FY) 2009.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–10.

DATES:

Applications Available: July 21, 2009.

Date of Pre-Application Meeting: July 21, 2009.

Deadline for Transmittal of Applications: September 4, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities.

Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/resprogram.html#RRTC*.

Priorities: NIDRR has established two priorities for this competition. The *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). The *Enhancing the Health and Wellness of Individuals with Neuromuscular Diseases* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2009, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Rehabilitation Research and Training Centers (RRTC) Requirements and *Enhancing the Health and Wellness of Individuals with Neuromuscular Diseases.*

Note: The full text of each of these priorities is included in its notice of final priorities in the **Federal Register** and in the applicable application package.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $700,000.

Maximum Award: We will reject any application that proposes a budget exceeding $700,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.133B–10.

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 person or team listed under *Accessible Format* in section VIII of this notice.

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. We recommend that you limit Part III to the equivalent of no more than 125 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.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for 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 recommended 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, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:* Applications Available: July 21, 2009.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 21, 2009. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza (PCP), Room 6029, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

Deadline for Transmittal of Applications: September 4, 2009.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. 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 in this notice.

6. *Other Submission Requirements:*

Applications for grants under this competition 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 Rehabilitation Research and Training Centers (RRTCs)—CFDA Number 84.133B–10 must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

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.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- 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: the 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.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by

hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

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 e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application;

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: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6030 PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

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b. *Submission of Paper Applications by Mail.*

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U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.133B–10), 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.

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1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

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The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of the proposed measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section V. 2. *Review and Selection Process* is voluntary, except where required by the selection criteria listed in the application package.

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If your application is not evaluated or not selected for funding, we notify you.

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Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

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- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
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Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6029, PCP, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov.*

If you use a TDD, call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

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 Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services, to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: July 15, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–17231 Filed 7–20–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs) Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B.

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces two priorities under the RRTC program administered by NIDRR. The Assistant Secretary may use one or both of these priorities for competitions in fiscal year (FY) 2009 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* These priorities are effective August 20, 2009.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6029, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@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: This notice of final priorities is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html*.

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine

what are the best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

RRTC Program

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on February 1, 2008 (73 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC*.

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants must also demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priorities (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on August 31, 2007 (72 FR 50516). The NPP included a background statement that described our rationale for each priority proposed in that notice, including the two priorities announced in this notice.

There are no differences between the two final priorities announced in this notice and the version of these priorities proposed in the NPP.

Public Comment: In response to our invitation in the NPP, 90 parties submitted comments on the proposed priorities. Because none of these comments involved the two priorities announced in this notice, we do not address any comments here. (In a notice of final priorities, published in the **Federal Register** on February 1, 2008 (73 FR 6132), the Department responded to all comments on priorities from the NPP that were included in that February 1, 2008 notice.)

Final Priorities:

Priority 1—Enhancing the Health and Wellness of Individuals With Neuromuscular Diseases.

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Rehabilitation Research and Training Center (RRTC) on Enhancing the Health and Wellness of Persons with Neuromuscular Diseases (NMDs). This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to improve rehabilitation outcome measures and rehabilitation interventions that can be applied in clinical or community-based settings.

In doing so, the RRTC must focus on no more than two of the following dimensions: Prevention or reduction of secondary conditions (*e.g.*, pain, fatigue, muscle weakness, associated sleep disorders, metabolic complications); improved mobility; emotional well-being; and access to community-based health promotion services and programs (*e.g.*, fitness, recreation, and nutrition). Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved outcome measures for use with individuals with NMDs. The RRTC must contribute to this outcome by identifying or developing and testing methods and measures to assess health and rehabilitation outcomes, participation in community-based programs, or both.

(b) Improved medical rehabilitation or community-based rehabilitation interventions. The RRTC must contribute to this outcome by identifying or developing and testing new rehabilitation interventions, replicating promising practices or programs, or both.

Priority 2—Enhancing the Health and Wellness of Individuals With Arthritis.

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for a Rehabilitation Research and Training Center (RRTC) on Enhancing the Health and Wellness of Individuals with Arthritis. This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to improve rehabilitation outcome measures and rehabilitation interventions that can be applied in clinical or community-based settings.

In doing so, the RRTC must focus on no more than two of the following dimensions: Prevention or reduction of secondary conditions (*e.g.*, pain, fatigue, depression); improved mobility; emotional well-being; and access to community-based health promotion services and programs (*e.g.*, fitness, recreation, and nutrition). Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved outcome measures for use with persons with arthritis. The RRTC must contribute to this outcome by identifying or developing and testing methods and measures to assess health and rehabilitation outcomes, participation in community-based programs, or both.

(b) Improved medical rehabilitation or community-based rehabilitation interventions. The RRTC must contribute to this outcome by identifying or developing and testing new rehabilitation interventions, replicating promising practices or programs, or both.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a

notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these priorities, 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 priorities 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.

Summary of potential costs and benefits:

The benefits of the RRTC program have been well-established over the years in that other RRTC projects have been completed successfully. The priorities announced in this notice will generate new knowledge through research and development activities.

Another benefit of these final priorities is that establishing new RRTCs will improve the lives of individuals with disabilities. These new RRTCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to achieve improved education, employment, and independent living outcomes.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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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 Andrew J. Pepin, Executive Administrator for the Office of Special Education and Rehabilitative Services, to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services.

Dated: July 15, 2009.

Andrew J. Pepin,

Executive Administrator for Special Education and Rehabilitative Services.

[FR Doc. E9–17233 Filed 7–20–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case No. CAC–015]

Energy Conservation Program for Consumer Products: Notice of Modification of Petition for Waiver and Interim Waiver of Mitsubishi Electric From the Department of Energy Commercial Package Water-Source Heat Pump Test Procedure, and Modification of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of modification of interim waiver; request for comments.

SUMMARY: Today's notice announces receipt of and publishes a revised list of model numbers for which Mitsubishi Electric & Electronics USA, Inc. (''Mitsubishi'') received an interim waiver of the test procedures applicable to commercial package water-source heat pumps. In addition, Mitsubishi has proposed that the definition of ''tested combination,'' used in the alternate test procedure, be refined based upon the AHRI Draft Standard 1230. Through this document, DOE is soliciting comments with respect to the Mitsubishi Petition.

DATES: DOE will accept comments, data, and information with respect to the Mitsubishi Petition until, but no later than August 20, 2009.

ADDRESSES: You may submit comments, identified by case number ''CAC–015,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include either the case number [CAC–015], and/or ''Mitsubishi Petition'' in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and

avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy of such comments to the petitioner, pursuant to 10 CFR 431.401(d). The contact information for the petitioner is: Mr. William Rau, Senior Vice President and General Manager, HVAC Advanced Products Division, Mitsubishi Electric & Electronics USA, Inc., 4300 Lawrenceville-Suwanee Road, Suwanee, GA 30024.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the Petition for Waiver and Application for Interim Waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Ms. Francine Pinto or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–9507. *E-mail: Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Modified Petition for Waiver of Test Procedure and Application for Interim Waiver
III. Alternate Test Procedure
IV. Discussion

I. Background

On October 30, 2006, Mitsubishi submitted a Petition for Waiver and an Application for Interim Waiver from the test procedures applicable to its water-source WR2 and WY series models from its CITY MULTI VRFZ line of commercial package heat pump equipment. On April 9, 2007, DOE published Mitsubishi's Petition for Waiver for commercial package water-source heat pumps in the **Federal Register**. 72 FR 17533 (April 9, 2007). In the April 9, 2007 notice, DOE granted Mitsubishi's Application for Interim Waiver.

II. Modified Petition for Waiver of Test Procedure and Application for Interim Waiver

On July 30, 2008, Mitsubishi informed DOE that after it filed its Petition for Waiver in October 2006, it developed additional basic models in the WR2 and WY product line. These products are similar to the basic models listed in Mitsubishi's Petition for Waiver except that they have different capacities (the capacities of these new models fall within the applicable range of capacities for the ISO 13256–1 (1998) test procedure). The new outdoor models also have the additional ability to connect multiple outdoor units together to create larger capacity systems.

Therefore, Mitsubishi requested that DOE include these additional models in the list of basic models for which the interim waiver was granted. In addition, Mitsubishi requested that DOE include these additional basic models in the list of models contained in the Petition for Waiver. These additional products have the ability to connect multiple outdoor units together to create larger capacity systems, up to 240,000 Btu/hr. Connecting two of the smallest capacity (72,000 Btu/h) outdoor units results in a system capacity of 144,000 Btu/h, which is above the maximum 135,000 Btu/h covered by the DOE test procedure. The multiple-outdoor-unit feature is therefore not relevant to this waiver because the resulting system capacities are outside the capacity range of the DOE test procedure for water-source central air conditioners and central air conditioning heat pumps. This waiver only covers systems with nominal cooling capacities less than 135,000 Btu/hr, which does not include any combined units.

Mitsubishi's modified list of products for which a waiver is requested, and for which a waiver can be granted, follows:

CITY MULTI Variable Refrigerant Flow Zoning System Outdoor Equipment:

WY–Series (PQHY) 208/230–3–60 and 460–3–60 split-system, water-sourced, variable-speed heat pumps with individual model nominal cooling capacities of 72,000, 96,000, 108,000 and 120,000 Btu/h.

WR2–Series (PQRY) 208/230–3–60 and 460–3–60 split-system, water-sourced, variable-speed heat pumps with heat recovery and with individual model nominal cooling capacities of 72,000, 96,000, 108,000 and 120,000 Btu/h.

CITY MULTI Variable Refrigerant Flow Zoning System Indoor Equipment:

P*FY models, ranging from 6,000 to 48,000 Btu/h, 208/230–1–60 and from 72,000 to 120,000 Btu/h, 208/230–3–60 split system variable-capacity air conditioner or heat pump.

PCFY Series—Ceiling Suspended—with capacities of 12/18/24/30/36 MBtu/h.

PDFY Series—Ceiling Concealed Ducted—with capacities of 06/08/12/15/18/24/27/30/36/48 MBtu/h.

PEFY Series—Ceiling Concealed Ducted (Low Profile)—with capacities of 06/08/12/18/24 MBtu/h.

PEFY Series—Ceiling Concealed Ducted (Alternate High Static Option)—with capacities of 15/18/24/27/30/36/48/54/72/96 MBtu/h.

PEFY–F Series—Ceiling Concealed Ducted (100% OA Option)—with capacities of 30/54/72/96/120 MBtu/h.

PFFY Series—Floor Standing (Concealed)—with capacities of 06/08/12/15/18/24 MBtu/h.

PFFY Series—Floor Standing (Exposed)—with capacities of 06/08/12/15/18/24 MBtu/h.

PKFY Series—Wall-Mounted—with capacities of 06/08/12/18/24/30 MBtu/h.

PLFY Series—4–Way Airflow Ceiling Cassette—with capacities of 12/18/24/30/36 MBtu/h.

PMFY Series—1–Way Airflow Ceiling Cassette—with capacities of 06/08/12/15 MBtu/h.

III. Alternate Test Procedure

Mitsubishi's July 30, 2008 petition to extend its Interim Waiver also contains a modification to the alternate test procedure published April 9, 2007. 72 FR 17533. It contains a proposed, new definition of the term ''tested combination.'' This proposed definition is the same as the one in Draft AHRI 1230, ''Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-

Conditioning and Heat Pump.'' This definition allows for systems with multiple outdoor units and has other differences for systems with nominal cooling capacities greater than 150,000 Btu/h. However, for the waiver under consideration here, which does not apply to systems with multiple outdoor units, nor to systems with cooling capacities greater than 135,000 Btu/h, the only change in the definition of ''tested combination'' that is relevant is its reference to ''capacity'' is changed to ''nominal cooling capacity.'' This does not substantially alter the original definition, but only clarifies it.

IV. Discussion

The Department has reviewed Mitsubishi's Initial Petition and its request to revise the list of model numbers for which Mitsubishi requested the waiver and interim waiver. The modified model list does not reflect any changes to the models listed in Mitsubishi's Initial Petition with respect to the properties making them eligible for a waiver, which involved testing difficulties. Given that the modified list does not change in any way the basis for granting the interim waiver, DOE finds that it is appropriate that the interim waiver granted on April 9, 2007, apply to the models listed in the Modified Petition. DOE thus clarifies that the April 9, 2007, interim waiver applies to the models listed in the Modified Petition, and that DOE will use the modified list of model numbers in any future action on the pending Petition for Test Procedure Waiver.

Issued in Washington, DC, on July 9, 2009.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E9–17287 Filed 7–20–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13528–000]

Soule Hydro LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

July 13, 2009.

On July 1, 2009, Soule Hydro LLC filed an application pursuant to section 4(f) of the Federal Power Act to study the feasibility of the proposed Soule River Hydroelectric Project No. 13528 located on the Soule River, within the Ketchikan Recording District, First Judicial District, near Hyder, Alaska. The project would occupy federal lands within the Tongass National Forest. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A proposed concrete dam with a maximum height of 160 feet; (2) a proposed storage reservoir with a normal water surface area of 950 acres, an active storage capacity of approximately 60,000 acre-feet, and a gross storage capacity of approximately 74,000 acre-feet; (3) a proposed 12-foot-diameter, 12,000-foot-long penstock; (4) a proposed powerhouse containing 2 generating units with a total installed capacity of 75 megawatts; (5) an open channel tailrace; (6) a 138-kilovolt, 9.72 mile-long submarine cable transmission line connecting to the existing interconnection transmission system in Hyder, and (7) appurtenant facilities. The proposed Soule River Hydroelectric Project would have an average annual generation of 270 gigawatt-hours.

Applicant Contact: Mr. Norman Gross, Director, Soule Hydro LLC, 11978 Artery Drive, Fairfax, VA 22030; phone: (703) 751–2200. Mr. Bob Grimm, Alaska Power and Telephone Company, P.O. Box 3222, 193 Otto Street, Port Townsend, WA 98368; phone: (360) 385–1733 x120.

FERC Contact: Gina Krump, (202) 502–6704, *gina.krump@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13528) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17237 Filed 7–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

July 10, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–4515–010.

Applicants: Cadillac Renewable Energy LLC; Escanaba Paper Company.

Description: Cadillac Renewable Energy LLC request for Category 1 Seller designation in the Central region pursuant to section 35.36(a)(2) of the FERC's regulations and the regional schedule set forth in Order 697–A.

Filed Date: 06/30/2009.

Accession Number: 20090701–0012.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09–1075–004.

Applicants: Falcon Energy LLC.

Description: Falcon Energy, LLC submits an Amended, Revised and Restated Application for Market-Based Rate Authorization and Request for Waivers and Blanket Authorizations and Request for Expedited Treatment of Falcon Energy, LLC.

Filed Date: 07/09/2009.

Accession Number: 20090709–0349.

Comment Date: 5 p.m. Eastern Time on Thursday, July 23, 2009.

Docket Numbers: ER09–1311–001.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Services, Inc submits a errata to its notice of termination of Service Agreement No. 3.

Filed Date: 07/01/2009.

Accession Number: 20090702–0181.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 22, 2009.

Docket Numbers: ER09–1283–001.

Applicants: The Energy Cooperative of Pennsylvania.

Description: Energy Cooperative of Pennsylvania, Inc submits an Amended Petition for Acceptance of Initial Tariff, waiver and Blanket Authority.

Filed Date: 07/09/2009.

Accession Number: 20090709–0348.

Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 2009.

Docket Numbers: ER09–1415–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits Filing of Installed Capacity Requirement, Hydro Quebec Interconnection Capability Credits and Related Values for the 2012–2013 Capability Year.

Filed Date: 07/07/2009.

Accession Number: 20090708–0148.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 28, 2009.

Docket Numbers: ER09–1423–000.

Applicants: Verde Energy USA, Inc.

Description: Verde Energy USA, Inc submits an application for authorization to make wholesales sales of energy et al.

Filed Date: 07/08/2009.

Accession Number: 20090709–0343.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: ER09–1425–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Notice of Cancellation for Service Agreement 550 under PacifiCorp's Seventh Revised Volume 11 Open Access Transmission Tariff etc.

Filed Date: 07/09/2009.

Accession Number: 20090709–0344.

Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 2009.

Docket Numbers: ER09–1426–000.

Applicants: Lehman Brothers Commodity Services Inc.

Description: Lehman Brothers Commodity Services Inc submits a Notice of Cancellation of First Revised FERC Electric Tariff 1 of LBCS.

Filed Date: 07/09/2009.

Accession Number: 20090709–0345.

Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 2009.

Docket Numbers: ER09–1427–000.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits rollover network integration transmission service agreement under the Open Access Transmission of Southern Companies.

Filed Date: 07/09/2009.

Accession Number: 20090709–0346.

Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 2009.

Docket Numbers: ER09–1428–000.

Applicants: Xcel Energy Operating Companies.

Description: Xcel Energy Services Inc submits the System Integration Coordination Services Agreement dated as of 2/1/09 between the United States et al.

Filed Date: 07/09/2009.

Accession Number: 20090709–0347.

Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 2009.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–39–005.

Applicants: Xcel Energy Services Inc.

Description: Supplemental Annual Report of Penalty Distributions for Xcel Energy Services Inc. under OA07–39, et al.

Filed Date: 07/07/2009.

Accession Number: 20090707–5068.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 28, 2009.

Docket Numbers: OA08–71–005.

Applicants: Xcel Energy Services Inc.

Description: Supplemental Annual Report of Penalty Distributions for Xcel Energy Services Inc. under OA07–39, et al.

Filed Date: 07/07/2009.

Accession Number: 20090707–5068.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 28, 2009.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH09–19–000.

Applicants: Keenan Fort Detrick Energy, LLC.

Description: Waiver Notification of Keenan Fort Detrick Energy, LLC.

Filed Date: 07/09/2009.

Accession Number: 20090709–5094.

Comment Date: 5 p.m. Eastern Time on Thursday, July 30, 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 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. E9–17219 Filed 7–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

July 9, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–30–002; EC09–65–001.

Applicants: KGen Hinds LLC, KGen Hot Spring LLC, KGen Murray I and II LLC, KGEN Sandersville LLC.

Description: Supplemental Filing of KGen Hinds LLC, KGen Hot Spring LLC, KGen Murray I and II LLC and KGen Sandersville LLC.

Filed Date: 07/08/2009.

Accession Number: 20090708–5099.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–1099–013; ER02–1406–014; ER99–2928–010.

Applicants: Cleco Power LLC; Acadia Power Partners, LLC; Cleco Evangeline LLC.

Description: Cleco Companies submits an updated market power analysis for the Cleco Companies, supporting

continued allowance of market-based rates in geographic markets etc.

Filed Date: 06/30/2009.

Accession Number: 20090630–0055.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER01–1403–010; ER06–1443–006; ER04–366–008; ER01–2968–011; ER01–845–009; ER05–1122–007; ER08–107–004.

Applicants: FirstEnergy Operating Companies, Pennsylvania Power Company, Jersey Central Power & Light Co., FirstEnergy Solutions Corp., FirstEnergy Generation Corporation; FirstEnergy Nuclear Generation Corporation, FirstEnergy Generation Mansfield Unit 1.

Description: Supplemental Information of FirstEnergy Generation Corp., et. al. regarding post-Study Year Energy Purchases from Wind-Powered Generators.

Filed Date: 06/30/2009.

Accession Number: 20090630–5201.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 21, 2009.

Docket Numbers: ER09–978–001.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection submits Substitute First Revised Sheet 224Q et al. to FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 07/08/2009.

Accession Number: 20090709–0143.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: ER09–1421–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits Contract for Interconnection, Load Control Boundary, and Maintenance with Northern States Power Co dated 6/12/09 etc.

Filed Date: 07/08/2009.

Accession Number: 20090709–0144.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 2009.

Docket Numbers: ER09–1422–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits a Facilities Construction Agreement with Minnkota Power Cooperative, Inc etc.

Filed Date: 07/08/2009.

Accession Number: 20090709–0147.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 29, 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 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. E9–17220 Filed 7–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF09–12–000]

East Cheyenne Gas Storage, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned East Cheyenne Gas Storage Project, and Request for Comments on Environmental Issues

July 13, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the East Cheyenne Gas Storage Project involving construction and operation of facilities by Cheyenne Gas Storage, LLC (East Cheyenne) in Logan County, Colorado. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on August 12, 2009.

This notice is being sent to the Commission's current environmental mailing for this project, which includes affected landowners; federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. Interested parties are encouraged to submit comments on the environmental issues they believe should be addressed in the EA. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could

initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

East Cheyenne plans to develop, construct, own and operate a natural gas storage facility in two nearly depleted oil production fields in Logan County, Colorado. Prior to, and concurrent with development of the gas storage fields, East Cheyenne plans to proceed with enhanced oil recovery (EOR) of petroleum reserves remaining in the storage fields. The construction and operation of the EOR facilities are under the jurisdiction of the Colorado Oil and Gas Conservation Commission (COGCC). Conversion or plugging of existing wells in the fields would be necessary as part of the EOR activities. The Cheyenne Gas Storage Project is anticipated to have an initial working gas storage capacity of approximately 9.8 billion cubic feet (Bcf), which would increase to approximately 18.9 Bcf between 3 and 5 years after operation begins.

The East Cheyenne Storage Project would consist of the following facilities:

- Ten gas injection/withdrawal wells to be drilled from six new well pads;
- A compressor station for injection and withdrawal of natural gas;
- Approximately 83,500 feet of 4- to 30-inch-diameter pipelines connecting the wellheads to the compressor station and associated facilities;
- A natural gas liquids recovery plant;
- Two water injection/disposal wells;
- Dual 24-inch-diameter pipelines to be constructed in a single corridor interconnecting with the Rockies Express Pipeline, LLC and Trailblazer Pipeline Company interstate natural gas pipelines at a site 3.5 miles north of the planned compressor station site;
- A meter station at the interstate pipeline system interconnects;
- Gas dehydration facilities;
- Amine treating facilities;
- Support facilities for construction; and
- Ancillary facilities necessary to operate the storage facility, flow lines, wells, and compressor facilities.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

The project would involve storing natural gas in nearly depleted reservoirs that underlie an area of approximately 2,400 acres, with an additional 3,600 acres serving as a storage buffer area. Construction of the planned facilities would disturb about 352.11 acres of land for the aboveground facilities and the pipelines. An additional 166.79 acres would be disturbed for non-jurisdictional facilities associated with EOR operations. Following construction, about 127.67 acres would be maintained for permanent operation of the gas storage project's facilities and 72.36 acres for non-jurisdictional EOR operations; the remaining acreage would be restored and allowed to revert to former uses. Much of the planned pipeline right-of-way would be parallel to existing County Road 39.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Hazardous waste; and
- Public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's Pre-filing Process. The purpose of the Pre-filing Process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to those on our environmental mailing list (see discussion of how to remain on our mailing list on page 6). A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Currently Identified Environmental Issues

We have already identified one issue that we think deserves attention based on a preliminary review of the planned facilities and the environmental information provided by East Cheyenne. Blue Sky Gas Storage, LLC (Docket No. CP09–428–000) is proposing a storage project in the same general area of Logan County as the planned East Cheyenne Storage Project. The EA will address potential cumulative impacts associated with construction and operation of both storage facilities.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your written comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before August 12, 2009.

For your convenience, there are three methods which you can use to submit your written comments to the Commission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called ''Documents and Filings''. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the ''eFiling'' feature that is listed under the ''Documents and Filings'' link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called ''Sign up'' or ''eRegister''. You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may file your comments with the Commission via mail by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

In all instances, please reference the project docket number PF09–12–000 with your submission. Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities (as defined in the Commission's regulations).

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

Once East Cheyenne files its application with the Commission, you may want to become an ''intervenor'', which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits, in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17238 Filed 7–20–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–63–000]

City of Orangeburg, SC; Notice of Filing

July 13, 2009.

Take notice that on July 2, 2009, the City of Orangeburg, South Carolina (City of Orangeburg), pursuant section 205(a) of the Public Utility Regulatory Policies Act, 16 U.S.C. 824a–l(a), and Rule 207(a)(5) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(5), filed a petition for declaratory requesting that the Commission exempt the Orangeburg Department of Public Utilities and other affected electric facilities from the policy and practice announced by the North Carolina Utilities Commission (NCUC) in its March 30, 2009 Order E–7, Sub 858 (NCUC Order). The City of Orangeburg also seeks a petition for declaratory order stating that the policy announced in the NCUC Order is preempted by the Commission's exclusive jurisdiction over wholesale power sales, transmission and rates under sections 201(a), 201(b), 205, and 206 of the Federal Power Act, 16 U.S.C. 824(a), 824(b), 824d, and 824e.

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 August 3, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17239 Filed 7–20–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–27–000]

UGI Central Penn Gas, Inc.; Notice of Rate Election

July 13, 2009.

Take notice that on July 7, 2009, UGI Central Penn Gas, Inc. (CPG) filed a Notice of Rate Election pursuant to section 284.123(b)(1)(ii) of the Commission's regulations. CPG proposes to utilize its presently effective Pennsylvania Public Utility Commission city-gate transportation rate under Rate Schedule GD for temporary transportation service for Corning Natural Gas Company pursuant to CPG's section 284.224 certificate.

Any person desiring to participate in this rate filing must file a motion to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 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 Monday, July 20, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–17236 Filed 7–20–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0519; FRL–8932–8]

Board of Scientific Counselors (BOSC) Executive Committee Meeting—August 6, 2009

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of one meeting of the Board of Scientific Counselors (BOSC) Executive Committee.

DATES: The meeting (a teleconference call) will be held on Thursday, August 6, 2009 from 1 p.m. to 3 p.m. EST. The meeting may adjourn early if all business is finished. Requests for the draft agenda or for making oral presentations at the meeting will be accepted up to one business day before the meeting.

ADDRESSES: Participation in the conference call will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Lorelei Kowalski, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0519, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Send comments by electronic mail (e-mail) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2009–0519.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2009–0519.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC), Executive Committee Meeting—August 6, 2009 Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–ORD–2009–0519.
- *Hand Delivery or Courier.* Deliver comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2009–0519.

Note: This is not a mailing address. 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–ORD–2009–0519. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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 in hard copy at the Board of Scientific Counselors (BOSC), Executive Committee Meeting—August 6, 2009 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104–R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564–3408; via fax at: (202) 565–2911; or via e-mail at: *kowalski.lorelei@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at this meeting may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section above. In general, each individual making an oral presentation will be limited to a total of three minutes.

Proposed agenda items for the teleconference include, but are not limited to: vet the draft Human Health program review report and discuss a revised process for program reviews. The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564–3408 or *kowalski.lorelei@epa.gov.* To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 14, 2009.

Mimi Dannel,

Acting Director, Office of Science Policy.

[FR Doc. E9–17276 Filed 7–20–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8933–1]

Protection of Stratospheric Ozone: Extension to Deadline for Critical Use Exemption Applications for 2012

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension to Submittal Date for Applications. On May 20, 2009, the Agency published a notice requesting applications for the Critical Use Exemption from the phaseout of methyl bromide for 2012 (*see* 74 FR 23705).

On July 1, 2009, EPA received a letter from methyl bromide stakeholders requesting an extension to the July 20, 2009 deadline for submitting Critical Use Exemption applications. The letter requested a deadline of August 24, 2009.

The letter explained that additional time is needed by the stakeholders to complete their Critical Use Exemption applications, citing recent industry involvement with associated international meetings and national regulatory decisions as impeding their ability to devote adequate time to the application process.

EPA believes that the requested extension is reasonable, and is granting the extension to all applicants. Critical Use Exemption Applications for 2012 are now due to the Agency on or before August 24, 2009. A copy of the July 1, 2009 letter to the Agency is available in the EPA Docket.

DATES: Applications for the 2012 Critical Use Exemption must be postmarked on or before August 24, 2009.

ADDRESSES: Applications for the methyl bromide Critical Use Exemption should be submitted in duplicate (two copies) by mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Team, Mail Code 6205J, 1200 Pennsylvania Ave, NW., Washington, DC 20460 or by courier delivery (other than U.S. Post Office overnight) to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Review Team, 1310 L St. NW., Room 1040, Washington DC 20005. EPA also encourages users to submit their applications electronically to Robert Burchard, Stratospheric Protection Division, at: *burchard.robert@epa.gov.* If the application is submitted electronically, applicants must fax a signed copy of Worksheet 1 to Robert Burchard at 202–343–2338 by the application deadline.

FOR FURTHER INFORMATION CONTACT:

General Information: U.S. EPA Stratospheric Ozone Information Hotline, 1–800–296–1996; also *http://www.epa.gov/ozone/mbr.*

Technical Information: Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 703–308–8136. E-mail: *chism.bill@epa.gov.*

Economic Information: Elisa Rim, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 703–308–8123. E-mail: *rim.elisa@epa.gov.*

Regulatory Information: Robert Burchard, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–343–9126. E-mail: *burchard.robert@epa.gov.*

EPA Docket: The docket can be accessed at the *http://www.regulations.gov* site. To obtain copies of materials in hard copy, please e-mail the EPA Docket Center: *a-and-r-docket@epa.gov.* The Docket ID No. for Critical Use Exemption Applications for 2012 is: EPA–HQ–OAR–2009–0277.

Dated: July 15, 2009.

Brian J. McLean,

Director, Office of Atmospheric Programs.

[FR Doc. E9–17275 Filed 7–20–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-09–0666]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these

requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Healthcare Safety Network (NHSN) (OMB No. 0920–0666)—Revision—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Healthcare Safety Network (NHSN) is a system designed to accumulate, exchange, and integrate relevant information and resources among private and public stakeholders to support local and national efforts to protect patients and to promote healthcare safety. Specifically, the data is used to determine the magnitude of various healthcare-associated adverse events and trends in the rates of these events among patients and healthcare workers with similar risks. The data will be used to detect changes in the epidemiology of adverse events resulting from new and current medical therapies and changing risks.

Healthcare institutions that participate in NHSN voluntarily report their data to CDC using a web browser-based technology for data entry and data management. Data are collected by trained surveillance personnel using written standardized protocols. This revision submission to OMB is a request to add a Hemovigilance module to the NHSN. This module is a response to a recommendation from HHS' Advisory Committee on Blood Safety and Availability (ACBSA) to develop a national system for outcome surveillance that includes recipients of blood and blood products. The module consists of 6 additional forms: (1) The Hemovigilance Module Annual Survey (1,000 annualized burden hours); (2) the Hemovigilance Module Monthly Reporting Plan (200 annualized burden hours); (3) Hemovigilance Module Blood Produce Incident Reporting—Summary Data (12,000 annualized burden hours); (4) Hemovigilance Module Monthly Reporting Denominators (3,000 annualized burden hours); (5) Hemovigilance Incident form (6,000 annualized burden hours); and (6) Hemovigilance Adverse Reaction form (10,000 annualized burden hours). The Hemovigilance Module totals an estimated 32,200 annualized burden hours

Also in this submission, CDC is also requesting to delete two forms currently approved by OMB: Implementation of Engineering Controls (currently approved for 300 burden hours) and the Laboratory Identified Multi-drug Resistant Organism (MDRO) Event Summary Form (currently approved for 4,500 burden hours). These forms are no longer needed by the NHSN. These deletions total 4,800 burden hours.

NHSN was first approved by OMB in 2005 and a revision request was approved by OMB in 2008. The 2008 revision request included modifications to approved forms, new modules, and an increase in the number of respondents. Later in 2008, CDC requested and received OMB approval to increase the number of respondents for the NHSN to 6,000 healthcare facilities. This change was a result of an increasing number of State legislatures requiring reporting of healthcare-acquired infections by healthcare facilities using the NHSN.

Participating institutions must have a computer capable of supporting an Internet service provider (ISP) and access to an ISP. The only other cost to respondents is their time to complete the appropriate forms.

OMB No. 0920–0666: National Healthcare Safety Network (NHSN) is currently approved for 5,144,844 annualized burden hours. This request includes a net increase of 27,400 burden hours (deletion of 2 forms: −4,800 burden hours; new Hemovigilance Module: +32,200 burden hours), bringing the total estimated annualized burden hours for the entire information collection request to 5,172,244 hours. There are no additional respondents for this request as they are already part of the respondent population.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Infection Control Practitioner	Facility Contact Information	6,000	1	10/60
	Patient Safety Component Hospital Survey	6,000	1	30/60
	Agreement to Participate and Consent	6,000	1	15/60
	Group Contact Information	6,000	1	5/60
	Patient Safety Monthly Reporting Plan	6,000	9	35/60
	Healthcare Personnel Safety Reporting Plan	600	9	10/60
	Primary Bloodstream Infection (BSI)	6,000	36	30/60
	Pneumonia (PNEU)—also includes Any Patient Pneumonia Flow Diagram and Infant and Children Pneumonia Flow Diagram.	6,000	72	30/60
	Urinary Tract Infection (UTI)	6,000	27	30/60
	Surgical Site Infection (SSI)	6,000	27	30/60
.	Dialysis Event (DI)	225	200	15/60
	Antimicrobial Use and Resistance (AUR)—Microbiology Laboratory Data.	6,000	45	3
	Antimicrobial Use and Resistance—Pharmacy Data.	6,000	36	2
	Denominators for Intensive Care Unit (ICU)/Other locations (Not NICU or SCA).	6,000	18	5
	Denominators for Specialty Care Area (SCA)	6,000	9	5
	Denominators for Neonatal Intensive Care Unit (NICU).	6,000	9	4
	Denominator for Procedure	6,000	540	8/60
	Denominator for Outpatient Dialysis	225	9	5/60
	Dialysis Survey	225	1	1

ESTIMATE OF ANNUALIZED BURDEN HOURS—Continued

Respondents	Form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
	List of Blood Isolates	6,000	1	1
	Manual Categorization of Positive Blood Cultures.	6,000	1	1
	Exposures to Blood/Body Fluids	600	50	1
	Healthcare Personnel Post-exposure Prophylaxis.	600	10	15/60
	Healthcare Personnel Demographic Data	600	200	20/60
	Healthcare Personnel Vaccination History	600	300	10/60
	Annual Facility Survey	600	1	8
	Healthcare Worker Survey	600	100	10/60
	Healthcare Personnel Influenza Vaccination Form.	600	500	10/60
	Healthcare Personnel Influenza Antiviral Medication Administration Form.	600	50	10/60
	Pre-season Survey on Influenza Vaccination Programs for Healthcare Workers.	600	1	10/60
	Post-Season Survey on Influenza Vaccination Programs for Healthcare Workers.	600	1	10/60
	Central Line Insertion Practices Adherence Monitoring Form (CLIP).	6,000	100	10/60
	Laboratory Testing	600	100	15/60
	MDRO Prevention Process and Outcome Measures Monthly Monitoring Form.	6,000	24	10/60
	MDRO or CDAD Infection Event Form	6,000	72	30/60
	Laboratory Identified MDRO or CDAD Event Form (LabID).	6,000	240	30/60
	Registration Form	6,000	1	5/60
	High Risk Inpatient Influenza Vaccine—Summary Form Method A.	6,000	5	16
	High Risk Inpatient Influenza Vaccine—Numerator Data Form Method B.	2,000	250	10/60
	High Risk Inpatient Influenza Vaccine—Summary Form Method B.	2,000	5	4
	High Risk Inpatient Influenza Vaccine—Denominator Data Form Method B.	2,000	250	5/60
	Hemovigilance Module Annual Survey	500	1	2
	Hemovigilance Module Monthly Reporting Plan.	500	12	2/60
	Hemovigilance Module Blood Product Incident Reporting—Summary Data.	500	12	2
	Hemovigilance Module Monthly Reporting Denominators.	500	12	30/60
	Hemovigilance Incident	500	72	10/60
	Hemovigilance Adverse Reaction	500	120	10/60

Dated: July 13, 2009.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–17263 Filed 7–20–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–09–09CD]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by e-mail to *omb@cdc.gov*.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Laboratory Medicine Best Practices Project (LMBP)—New—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

CDC is seeking approval from the Office of Management and Budget (OMB) to collect information from healthcare organizations in order to conduct a systemic review of laboratory practice effectiveness. The purpose of information collection is to include completed unpublished quality improvement studies/assessments carried out by healthcare organizations (laboratories, hospitals, clinics) in systematic reviews of practice effectiveness. CDC has been sponsoring the Laboratory Medicine Best Practices (LMBP) initiative to develop new systematic evidence reviews methods for making evidence-based recommendations in laboratory medicine. This initiative supports the CDC's mission of improving laboratory practices.

The focus of the Initiative is on pre- and post-analytic laboratory medicine practices that are effective at improving health care quality. While evidence-based approaches for decision-making have become standard in healthcare, this has been limited in laboratory medicine. No single-evidence-based model for recommending practices in laboratory medicine exists, although the number of laboratories operating in the United States and the volume of laboratory tests available certainly warrant such a model.

The Laboratory Medicine Best Practices Initiative began in October 2006, when CDC convened the Laboratory Medicine Best Practices Workgroup (Workgroup), a multidisciplinary panel of experts in several fields including laboratory medicine, clinical medicine, health services research, and health care performance measurement. The Workgroup has been supported by staff at CDC and the Battelle Memorial Institute under contract to CDC.

To date, the Laboratory Medicine Best Practices (LMBP) project work has been completed over three phases. During Phase 1 (October 2006–September 2007) of the project, CDC staff developed systematic review methods for conducting evidence reviews using published literature, and completed a proof-of-concept test. Results of an extensive search and review of published literature using the methods for the topic of patient specimen identification indicated that an insufficient quality and number of studies were available for completing systematic evidence reviews of laboratory medicine practice effectiveness for multiple practices, and hence for making evidence-based recommendations. These results were considered likely to be generalizable to most potential topic areas of interest.

A finding from Phase 1 work was that laboratories would be unlikely to publish quality improvement projects or studies demonstrating practice effectiveness in the peer reviewed literature, but that they routinely conducted quality improvement projects and had relevant data for completion of evidence reviews. Phase 2 (September 2007–November 2008) and Phase 3 (December 2008–September 2009), involved further methods development and pilot tests to obtain, review, and evaluate published and unpublished evidence for practices associated with the topics of patient specimen identification, communicating critical value test results, and blood culture contamination. Exploratory work by CDC supports the existence of relevant unpublished studies or completed quality improvement projects related to laboratory medicine practices from healthcare organizations. The objective for successive LMBP evidence reviews of practice effectiveness is to supplement the published evidence with unpublished evidence to fill in gaps in the literature.

Healthcare organizations and facilities (laboratory, hospital, clinic) will have the opportunity to voluntarily enroll in an LMBP network and submit readily available unpublished studies; quality improvement projects, evaluations, assessments, and other analyses relying on unlinked, anonymous data using the LMBP Submission Form. LMBP Network participants will also be able to submit unpublished studies/data for evidence reviews on an annual basis using this form. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden (in hours)	Total burden (in hours)
Healthcare Organizations	150	1	40/60	100
Total				100

Dated: July 15, 2009.

Marilyn S. Radke,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–17266 Filed 7–20–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–F–0303]

Ajinomoto Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ajinomoto Co., Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of N-[*N*-[3-(3-hydroxy-4-methoxyphenyl) propyl-α-aspartyl]-L-phenylalanine 1-methyl ester, monohydrate (CAS Reg. No. 714229–20–6) for use as a non-nutritive sweetener in tabletop applications and powdered beverage mixes. Ajinomoto Co., Inc., also proposes that this additive be identified as advantame.

DATES: Submit written or electronic comments on the petitioner's

environmental assessment by August 20, 2009.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1304.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4778) has been filed by Ajinomoto Co., Inc., c/o Ajinomoto Corporate Services LLC, 1120 Connecticut Ave. NW., suite 1010, Washington, DC 20036. The petition proposes to amend the food additive regulations in part 172 *Food Additives Permitted For Direct Addition to Food for Human Consumption* (21 CFR part 172) to provide for the safe use of N-[*N*-[3-(3-hydroxy-4-methoxyphenyl) propyl-α-aspartyl]-L-phenylalanine 1-methyl ester, monohydrate (CAS Reg. No. 714229–20–6) for use as a non-nutritive sweetener in tabletop applications and powdered beverage mixes.

The potential environmental impact of this petition is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **DATES** and **ADDRESSES**) for public review and comment.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required, and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: July 10, 2009.

Laura M. Tarantino,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. E9–17250 Filed 7–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Health and Nutrition Examination Survey (NHANES) Stored Biologic Specimens: Guidelines for Proposals to Use Samples and Proposed Cost Schedule

ACTION: Notice and request for comments.

SUMMARY: The National Health and Nutrition Examination Survey (NHANES) is a program of periodic surveys conducted by the National Center for Health Statistics (NCHS) of the Centers for Disease Control and Prevention (CDC). Examination surveys conducted since 1960 by NCHS, have provided national estimates of health and nutritional status of the United States civilian non-institutionalized population. To add to the large amount of information collected for the purpose of describing the health of the population in the most recent survey, serum, urine and limited plasma samples were collected and stored for future research projects. Specimens are currently available from NHANES III (conducted from 1988–1994) and from NHANES 1999–2008. In 1999, NHANES became a continuous survey with data release every two years. Specimens are available from two year survey cycles after the demographic file has been released to the public. Participants in the survey that began in 1999 signed a separate consent document agreeing to specimen storage allowing their biologic specimens to be used for approved research projects.

Specimens are stored in two Specimen Banks. Surplus samples that were initially used for laboratory assays included in the surveys, have since been stored at −70 °C and have been through at least two freeze-thaw cycles. They are stored at a commercial repository under contract to NCHS. In addition, on average, six vials of sera were also stored in vapor-phase liquid nitrogen at the CDC and ATSTR Specimen Packaging, Inventory and Repository (CASPIR) Repository in Lawrenceville, GA. These specimens have not undergone a freeze-thaw cycle. The CASPIR Repository is considered a long-term repository for the NHANES specimens. NCHS is making both of these collections available for research proposals. The research proposals that can use the surplused specimens will receive higher priority. Proposals that request the specimens in CASPIR need to justify the use of the unthawed specimens.

The purpose of this notice is to request comments on this program and the proposed cost schedule. After consideration of comments submitted, CDC will finalize and publish the cost schedule and accept proposals for use of the NHANES stored biologic samples. Please go to *http://www.cdc.gov/nchs/nhanes/proposal_guidelines.htm* for final proposal guidelines.

All interested researchers are encouraged to submit proposals. No funding is provided as part of this solicitation. Samples will not be provided to those projects requiring funding until the project has received funds. Approved projects that do not obtain funding will be canceled. A more complete description of this program follows.

DATES:

- *Comment Receipt Date:* August 20, 2009.
- *Invitation to Submit Proposals:* Can be submitted on an ongoing basis
- *Scientific Review Date:* Within two months of proposal submission.
- *Institutional Review Date:* Within one month of final proposal acceptance.
- *Anticipated distribution of samples:* one month after IRB approval.

ADDRESSES: To send comments and to request information, *contact:* Dr. Geraldine McQuillan, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782,

Phone: 301–458–4371,

Fax: 301–458–4028,

E-mail: gmm2@cdc.gov.

Internet: http://www.cdc.gov/nchs/about/major/nhanes/serum1b.htm.

Authority: Sections 301,306 and 308 of the Public Health Service Act (42 U.S.C. 241, 242k and 242M).

SUPPLEMENTARY INFORMATION:

The goals of NHANES are: (1) To estimate the number and percent of

persons in the U.S. population and designated subgroups with selected diseases and risk factors; (2) to monitor trends in the prevalence, awareness, treatment and control of selected diseases; (3) to monitor trends in risk behaviors and environmental exposures; (4) to analyze risk factors for selected diseases; (5) to study the relationship between diet, nutrition and health; (6) to explore emerging public health issues and new technologies; and, (7) to establish and maintain a national probability sample of baseline information on health and nutrition status.

Specimens are available from the third National Health and Nutrition Examination Survey (NHANES III) and the continuous NHANES that started in 1999. Approximately 30,000 individuals were examined in NHANES III which began in the fall of 1988, and ended in the fall of 1994. This survey can be analyzed in two phases. Phase 1 was conducted from October 1988 to October 1991 and Phase 2 began October 1991 and ended October 1994. Though participants consented to storing samples of their blood for future testing only research projects that include results that are judged not to have clinical significance for participants will be accepted. Clinical significance is defined by the following criteria:

- The findings are valid and done by a CLIA-certified laboratory, and
- The findings may have significant implications for the subjects' health concerns, and
- A course of action to ameliorate, or treat the concerns is readily available.

There are approximately 368,473 serum samples available for research proposals using NHANES III samples. An aliquot of the samples will be reserved in perpetuity. *See: http://www.cdc.gov/nchs/about/major/nhanes/nh3data.htm* for more information on NHANES III.

Beginning in 1999, NHANES became a continuous, annual survey with examination of approximately 5,000 individuals a year and data release every two years. Proposed research projects and samples requested must come from this two-year design (i.e. request must be for 1999–2000 samples or 2001–2002, etc.). Samples from a single year of the survey will not be provided for research projects, but multiple two-year cycles may be requested. There are approximately 329,420 serum samples, 55,411 urine samples and 79,604 plasma samples available for research proposals. An aliquot of the samples will be reserved in perpetuity. For details of the sampling design see the Analytic Guidelines at: *http://www.cdc.gov/nchs/about/major/nhanes/nhanes2003–2004/analytical_guidelines.htm.*

Starting in 1999 to 2008 survey participants were informed in the consent document for future laboratory analysis that they would not receive the results from these studies. Therefore, only research projects that propose laboratory results that do not have clinical significance (see definition of clinical relevance above) to an individual will be accepted by NCHS. Clinical significance of a laboratory test will be judged by the NHANES Medical Officer, but the researcher should address this in the research proposal. *See http://www.cdc.gov/nchs/about/major/nhanes/nhanes2007–2008/current_nhanes_07_08.htm* for a copy of the current consent document.

All proposals for use of NHANES samples will be evaluated by a technical panel for scientific merit and by the NHANES Ethics Review Board (ERB) for any potential human subjects concerns. The NHANES ERB will review the proposal even if the investigator has received approval by their institutional review panel.

To determine if this limited resource should be used in the proposed projects, a Technical Panel will evaluate the public health significance and scientific merit of the proposed research. Scientific merit will be judged as to the scientific, technical or medical significance of the research, the appropriateness and adequacy of the experimental approach, and the methodology proposed to reach the research goals. See 'Criteria for Technical Evaluation of Proposals' below. The proposal should outline how the results from the laboratory analysis will be used. Because NHANES is a complex, multistage probability sample of the national population, the appropriateness of the NHANES sample to address the goals of the proposal will be an important aspect of scientific merit. The survey oversamples the two largest race/ethnic minority groups, non-Hispanic blacks and Mexican Americans along with other subgroups of the population. Sampling weights are therefore used to make national estimates of frequencies. The use of weights, sampling frame and methods of assessment of variables included in the data are likely to affect the proposed research. The Technical Panel will review the analysis plan and evaluate whether the proposal is an appropriate use of the NHANES population. The Technical Panel will also assure that the proposed project does not go beyond either the general purpose for collecting the samples in the survey, or of the specific stated goals of the proposal.

Investigators are encouraged to review the NHANES data, survey documents, manuals and questionnaires at: *http://www.cdc.gov/nchs/about/major/nhanes/nhanes99–02.htm* or for NHANES III: *http://www.cdc.gov/nchs/about/major/nhanes/nh3data.htm.*

Procedures for Proposals: All investigators (including CDC investigators) must submit a proposal for use of NHANES specimens.

Proposals are limited to a maximum of 10 single-spaced typed pages, excluding figures and tables, using 10 cpi type density. The cover of the proposal should include the name, address, and phone number and E-mail address of the principal investigator (PI) and the name of the institution where the laboratory analysis will be done. All proposals should be E-mailed to *gmm2@cdc.gov*. Proposals must include a cover page with the title of the proposal and the name, address, phone number and E-mail address of all investigators. Proposals from CDC investigators must also include investigators' scientific ethic verification number.

The following criteria will be used for technical evaluation of proposals:

Proposals should include the following information:

(1) *Specific Aims:* List the broad objectives; describe concisely and realistically what the research is intended to accomplish, and state the specific hypotheses to be tested. NHANES is designed to provide prevalence estimates of diseases or conditions that are expected to affect between 5–10 percent of the population. Research proposals that expect much lower prevalence estimates need to provide more detail on why specimens from NHANES are needed for the project and provide details on how these data will be analyzed.

(2) *Background and Public Health Significance:* Describe the public health significance, scientific merit and practical utility of the assay. Briefly describe in 1–2 pages the background of the proposal, identifying gaps in knowledge that the project is intended to fill. State concisely the importance of the research in terms of the broad, long-term objectives and public health relevance including a discussion of how the results will affect public health policy or further scientific knowledge. The proposal should justify the need for specimens that are representative of the U.S. population. The proposer should convey how the results will be used and the relationship of the results to the data already collected in NHANES. The

proposer should include an analysis plan. The analyses ought to be consistent with the NHANES mission and the health status variables.

(3) *Research Design and Methods:* Describe the research design and the procedures to be used. A detailed description of laboratory methods including validity and reliability must be included with references. The volume of specimen and number of samples requested must be specified. Adequate methods for handling and storage of samples must also be addressed. The laboratory must demonstrate expertise in the proposed laboratory test including the capability for handling the workload requested in the proposal. The proposal should also include a justification for determination of sample size or a power calculation. If the researcher is requesting a sub-sample of specimens, a detailed description and justification, must be given. The researcher must describe how this sub-sample will be re-weighted to provide national estimates. The program will evaluate the study design and analysis plan in the proposal to determine whether the project is consistent with the design of the NHANES survey. Sub-samples are less useful to the research community when the data are released in the public domain, so such requests will receive a lower priority for the specimens. Restricting a research proposal to demographic categories that are design variables for the survey is encouraged if laboratory testing must be restricted.

(4) *Clinical Significance or results:* Since the consent document for specimen storage and continuing studies states that individual results will not be provided, the clinical significance of the proposed laboratory test should be addressed. The proposal should include a discussion of the potential clinical significance of the results and whether there is definitive evidence that results of the test would provide grounds for medical intervention even if many years have passed since the examination of the participant and collection of the sample. Any test with results that should be reported to a participant should be considered for inclusion in the concurrent survey, and is not appropriate for testing on the stored samples.

(5) *Qualification:* Provide a brief description of the Principal Investigator's expertise in the proposed area should be provided, including publications in this area within the last three years. A representative sample of earlier publications may be listed as long as this section does not exceed two pages.

(6) *Period of performance:* Specify the project period. Substantial progress must be made in the first year, and the project should be completed in two years. If additional time is needed for the research project a detailed justification with a timeline should be included. The investigator should address his/her ability to comply with this timeline or request and justify additional time for the project. Return of the specimens will be requested if progress is not made in the project at the end of the second year. Refund of payment for the specimens will not be returned in this situation. At the end of the project period, any unused samples must be returned to the NHANES Specimen Bank or discarded. The NCHS Project Officer must be consulted about the disposition of the samples.

(7) *Funding:* Include the source and status of the funding to perform the requested laboratory analysis should be included. Investigators will be responsible for the cost of processing and shipping the samples. The cost per specimen is $6.50. The basis for the cost structure is in the last section of this document. Reimbursement for the samples will be collected before the samples are released.

Submission of Proposals: Proposals can be submitted in MS Word format by e-mail to: Dr. Geraldine McQuillan, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, *Phone:* 301–458–4371 *Fax:* 301–458–4028, *e-mail: gmm2@cdc.gov.*

Approved Proposals: Approved projects will be provided specimens on receipt of a signed Materials Transfer Agreement (MTA) and a check (written to The Centers for Disease Control and Prevention) for the cost of the specimens. All laboratory results obtained from the samples will be sent back to NCHS to be linked to the sequence number that is the linking identifier on the public use files. All files will undergo disclosure review at NCHS. Within 90 days of the return of the data to NCHS these data may be released to the public.

Agency Agreement: A formal signed agreement in the form of a Materials Transfer Agreement (MTA) with individuals who have projects approved will be completed before the release of the samples. This agreement will contain the conditions for use of the samples as stated in this document and as agreed upon by the investigators and CDC.

Progress Reports: Brief progress reports will be submitted annually. This will be the basis for the NHANES ERB continuation reports that are required annually.

Disposition of Results and Samples: No samples provided can be used for any purpose other than those specifically requested in the proposal and approved by the Technical Panel and the NHANES ERB. No sample can be shared with others, including other investigators, unless specified in the proposal and so approved. Any unused samples must be returned to the NHANES Specimen Bank or disposed of upon completion of the approved project. These results, once returned to NCHS, will be part of the public domain. The proposer will have 90 days for quality control review of the data before public release.

Proposed Cost Schedule for Providing NHANES Specimens: A nominal processing fee of $8.50 is proposed for each sample received from the NHANES Specimen Bank. The costs include both the collection, storage and processing of the specimens along with the review of proposals and the preparation of the data files. These costs were based on an assumption that NCHS will receive and process eight proposals in a year, each requesting 5,000 samples as shown in the table below.

The materials listed are for the recurring laboratory costs to dispense and prepare the samples during collection and for shipping; the computer software needed for the preparation of the data files and for the release of the data along with documentation on the NHANES Web page. Labor costs are based on a proposal administrator and computer programmers at NCHS to prepare the data files. The storage and pulling fees include the costs for the NHANES repository.

Total costs	Cost per vial
Labor	$1.15
Collection Storage	4.10
Pulling specimens	1.04
Shipping	0.32
Subtotal	6.61
CDC/FMO support (9%)	0.59
Subtotal	7.20
NCHS support (18%)	1.30
Total	8.50

Comments are solicited on the proposed cost schedule. Comments are due by: August 20, 2009.

Send Comments and Requests for Information to: Dr. Geraldine

McQuillan, Division of Health and Nutrition Examination Surveys, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 4204, Hyattsville, MD 20782, *Phone:* 301–458–4371; *Fax:* 301–458–4028, *e-mail: gmm2@cdc.gov*.

Tanja Popovic,

Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–17267 Filed 7–20–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0309]

International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH); Draft Guidance for Industry on Bracketing and Matrixing Designs for Stability Testing of New Veterinary Drug Substances and Medicinal Products (VICH GL45); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry (#198) entitled ''Draft Guidance for Industry on Bracketing and Matrixing Designs For Stability Testing of New Veterinary Drug Substances and Medicinal Products,'' VICH GL45. This draft guidance has been developed for veterinary use by the International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH). This draft guidance is an annex to a VICH guidance entitled ''Stability Testing of New Veterinary Drug Substances and Medicinal Products (Revision),'' VICH GL3(R), that published in the **Federal Register** of November 23, 2007 (72 FR 65751). This draft VICH guidance document is intended to provide guidance on the application of reduced designs (i.e., bracketing and matrixing) for stability studies conducted in accordance with the principles outlined in VICH GL3(R).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance submit written or electronic comments on the draft guidance by August 20, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dennis Bensley, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, 240–276–8268, *e-mail: dennis.bensley@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry (#198) entitled ''Draft Guidance for Industry on Bracketing and Matrixing Designs for Stability Testing of New Veterinary Drug Substances and Medicinal Products,'' VICH GL45. In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote the international harmonization of regulatory requirements. FDA has participated in efforts to enhance harmonization and has expressed its commitment to seek scientifically based harmonized technical procedures for the development of pharmaceutical products. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies in different countries.

FDA has actively participated in the International Conference on Harmonisation of Technical Requirements for Approval of Pharmaceuticals for Human Use for several years to develop harmonized technical requirements for the approval of human pharmaceutical and biological products among the European Union, Japan, and the United States. The VICH is a parallel initiative for veterinary medicinal products. The VICH is concerned with developing harmonized technical requirements for the approval of veterinary medicinal products in the European Union, Japan, and the United States, and includes input from both regulatory and industry representatives.

The VICH Steering Committee is composed of member representatives from: The European Commission, European Medicines Evaluation Agency, European Federation of Animal Health, Committee on Veterinary Medicinal Products, the U.S. FDA, the U.S. Department of Agriculture, the Animal Health Institute, the Japanese Veterinary Pharmaceutical Association, the Japanese Association of Veterinary Biologics, and the Japanese Ministry of Agriculture, Forestry, and Fisheries.

Four observers are eligible to participate in the VICH Steering Committee: One representative from the government of Australia/New Zealand, one representative from the industry in Australia/New Zealand, one representative from the government of Canada, and one representative from the industry of Canada. The VICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation for Animal Health (IFAH). An IFAH representative also participates in the VICH Steering Committee meetings.

II. Draft Guidance on Bracketing and Matrixing Designs for Stability Testing

The VICH Steering Committee held a meeting on February 11, 2008, and agreed that the draft guidance document entitled ''Draft Guidance for Industry on Bracketing and Matrixing Designs for Stability Testing of New Veterinary Drug Substances and Medicinal Products,'' VICH GL45 should be made available for public comment. This draft VICH guidance document provides guidance on bracketing and matrixing study designs. Specific principles are defined in this guidance for situations in which bracketing or matrixing can be applied. This document is intended to address recommendations on the application of bracketing and matrixing to stability studies conducted in accordance with principles outlined in the VICH GL3(R), ''Stability Testing of New Veterinary Drug Substances and Medicinal Products (Revision).'' FDA and the VICH Expert Quality Working Group will consider comments about the draft guidance document.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections

of information in sections 1–2 of this guidance have been approved under OMB Control No. 0910–0032.

IV. Significance of Guidance

This draft guidance, developed under the VICH process, has been revised to conform to FDA's good guidance practices regulation (21 CFR 10.115). For example, the document has been designated ''guidance'' rather than ''guideline.'' In addition, guidance documents must not include mandatory language such as ''shall,'' ''must,'' ''require,'' or ''requirement,'' unless FDA is using these words to describe a statutory or regulatory requirement.

The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of applicable statutes and regulations.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cvm* or *http://www.regulations.gov*.

Dated: July 10, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–17251 Filed 7–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Risk Communication Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Risk Communication Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 13, 2009, from 8 a.m. to 5 p.m. and August 14, 2009, from 8 a.m. to 2 p.m.

Location: National Transportation Safety Board (NTSB) Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594 (at Metro's L'Enfant Plaza station; parking is limited and public transportation is recommended.)

Contact Person: Lee L. Zwanziger, Office of the Commissioner, Office of Policy, Planning and Preparedness, Office of Planning, Food and Drug Administration, 5600 Fishers Lane, rm. 14–90, Rockville, MD 20857, 301–827–2895, FAX: 301–827–4050, e-mail: *RCAC@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732112560. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On August 13 and 14, 2009, the Committee will discuss FDA's external research on, and internal assessment of, communications about food safety problems. This discussion will address research on consumer knowledge of food recalls and plans for how to monitor communication effectiveness during the course of a recall. The purpose of the discussion is to advise FDA on developing more effective communication strategies. Also on August 14, 2009, the RCAC will be briefed on the work of the FDA Transparency Task Force.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 7, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on August 13th and 10:30 to 11:30 a.m. on August 14th. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 6, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 7, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lee L. Zwanziger at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Dated: July 10, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–17222 Filed 7–20–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences; Special Emphasis Panel Plant Transcriptomes—ARRA Funds.

Date: August 6, 2009.

Time: 10:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John J. Laffan, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301–594–2773.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; ZGM1–GDB–2–BG—ARRA Funds.

Date: August 7, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Arthur L. Zachary, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, (301) 594–2886, *zacharya@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; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 14, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–17191 Filed 7–20–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel (SEP): Health Promotion and Disease Prevention Research Centers, Special Interest Project Competitive Supplements (SIPS) (U48 Panels N, O and P), RFA–DP09–101SUPP09, Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Dates:

9 a.m.–5 p.m., August 5, 2009 (closed).

9 a.m.–5 p.m., August 6, 2009 (closed).

9 a.m.–5 p.m., August 7, 2009 (closed).

Place: Westin Hotel, 3377 Peachtree Road, NE., Atlanta, GA, 30326, Telephone (678) 500–3100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of the application received in response to ''Health Promotion and Disease Prevention Research Centers, Special Interest Project Competitive Supplements (SIPS) (U48 Panels N, O and P), RFA–DP09–101SUPP09, initial review.''

Contact Person for More Information: Brenda Colley-Gilbert, PhD, Director, Extramural Research Program Office, CCH, 47770 Buford Highway, MS K–92, Atlanta, GA 30341, Telephone (770) 488–8390.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 16, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–17359 Filed 7–20–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0089]

Privacy Act of 1974; Department of Homeland Security—028 Complaint Tracking System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to establish a new Department of Homeland Security system of records notice titled, DHS/ALL–028 Complaint Tracking System. Complaint Tracking System is a correspondence workflow management system that assists the DHS Privacy Office in responding to complaints, comments and requests for redress from the public, other government agencies, and the private sector. Complaint Tracking System provides the capacity to handle correspondence that requires analysis, storage, categorization, and response from DHS Privacy Office personnel. It allows users to manage correspondence tracking with pre-defined routing inside workflow templates. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Written comments must be submitted on or before August 20, 2009. The established system of records will be effective August 20, 2009.

ADDRESSES: You may submit comments, identified by docket number DHS–2009–0089 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://*

www.regulations.gov, including any personal information provided.

• *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues, please contact: Mary Ellen Callahan, (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) is establishing a new system of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), entitled the Complaint Tracking System (CTS). The Privacy Office conducted this SORN because CTS is a group of records under the control of DHS that is retrieved by the name of an individual or other identifier particular to the individual.

In accordance with its statutory responsibilities, the DHS Privacy Office receives numerous complaints, comments, and requests for redress of privacy issues throughout the year. This correspondence requires analysis, storage, categorization, and coordinated responses. The CTS is a workflow system that Privacy Office personnel utilize to respond efficiently to inquiries from the public and other government and private-sector agencies. CTS allows users to manage correspondence tracking with pre-defined routing inside workflow templates.

Consistent with DHS's information sharing mission, information stored in the CTS may be shared with other DHS components, as well as appropriate Federal, State, local, tribal, foreign, or international government agencies. This sharing will take place only after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to establish a new Department of Homeland Security system of records notice titled, DHS/ALL–028 Complaint Tracking System. Complaint Tracking System is a correspondence workflow management system that assists the DHS Privacy Office in responding to complaints, comments and requests for redress from the public, other government agencies, and the private sector. Complaint Tracking System provides the capacity to handle correspondence that requires analysis, storage, categorization, and response from DHS Privacy Office personnel. It allows users to manage correspondence tracking with pre-defined routing inside workflow templates. This newly established system will be included in the Department of Homeland Security's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the Complaint Tracking System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records:

DHS/ALL–028

SYSTEM NAME:

Department of Homeland Security Complaint Tracking System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the DHS Data Center in Washington, DC and at a limited number of remote locations where DHS components or programs maintain secure facilities and conduct the mission of DHS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. All individuals who submit information through the DHS CTS.

B. All individuals whose records have been referred to a DHS component or program redress process by other components, programs, or agencies in connection with DHS CTS.

C. Attorneys or other persons representing individuals submitting such requests and appeals and individuals who are the subjects of such requests.

D. DHS personnel or contractors assigned to handle such requests or appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Individual's name; prefix, suffix, or title; date of birth; gender; social security number; country of origin; organization; contact information; phone number; fax number; e-mail address; address; application information, including the date of request and a description of the circumstances that led to the request of the redress form; passport number; appropriate immigration documents; documents used to support application for entry; correspondence from individuals regarding their redress requests; records of contacts made by or on behalf of individuals; documents submitted to verify identity or otherwise support the request for redress; and any other document relevant and appropriate to the particular complaint.

B. For those issuing complaints as representatives of affected individuals, representative name, contact information, phone number, e-mail address, relationship to the affected individuals, and power of attorney.

C. The name of the DHS component, DHS program, or other Federal agency, which will be responsible for addressing the incoming complaint as well as supporting components or agencies.

D. Administrative and contact information concerning DHS employees, contractors, or other agency representatives associated with the processing and/or adjudication of requests submitted to the complaint process.

E. Appropriate information to reflect the resolution of a particular complaint,

information determined during adjudication of the case, and sensitive information relevant to the complaint for the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The collection of documents within CTS is governed by 5 U.S.C. 301 (general agency powers for recordkeeping), the Privacy Act of 1974, as amended (5 U.S.C. 552a), and 6 U.S.C. 142 (providing for appointment of a Privacy Officer to assure, in part, that personal information contained in Privacy Act system of records is handled in full compliance with fair information practices).

PURPOSE(S):

The purpose of this system is to assist the Privacy Office in responding to complaints, comments and requests for redress from the public, other government agencies, and the private sector.

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, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a Federal, State, tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: (1) To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; (2) for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or (3) for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

I. To an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee.

J. To appropriate agencies, entities, and persons when: (1) It is suspected or confirmed that the security or confidentiality of information in the System of Records has been compromised; (2) DHS has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with the DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

K. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities. Electronic records are stored on magnetic disc, tape, and digital media.

RETRIEVABILITY:

Data are retrievable by the individual's name or other identifier, such as case number, as well as non-identifying information.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable laws, rules, and policies, including the DHS Information Technology Security Program Handbook. The CTS security protocols will meet applicable NIST Security Standards, from Authentication to Certification and Accreditation. Records in the system will be maintained in a secure, password-protected electronic system that will utilize security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. DHS file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

RETENTION AND DISPOSAL:

CTS handles both information collected directly from the individual and information collected from DHS components and other agencies. DHS is working on a retention schedule with its Senior Records Officer for information collected directly from the individual. It is anticipated that the retention period for these records will be up to seven years. To the extent information is collected from other systems, data is retained in accordance with the record retention requirements of those systems.

SYSTEM MANAGER AND ADDRESS:

The System Manager is the Program Manager, DHS CTS, U.S. Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Any person, including citizens and representatives of Federal, State or local governments; businesses; and industries. Any Federal system with records appropriate and relevant to the redress process, including the Intranet Quorum system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemption shall be asserted with respect to information submitted by and collected from the individual or the individual's representative in the course of any redress process associated with this System of Records.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records, which are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5), DHS will also claim the original exemption for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f); and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Such exempt records or information may be law enforcement or national security investigation records, law enforcement activity and encounter records, or terrorist screening records.

These records could come from various DHS systems, such as the Treasury Enforcement Communications System (TECS) and the Transportation Security Information System (TSIS), or from third agency systems. DHS, after conferring with the appropriate component or agency, may waive applicable exemptions in appropriate circumstances and where it would not appear to interfere with or adversely affect the law enforcement or national security purposes of the systems from which the information is recompiled or in which it is contained. As required under the Privacy Act, DHS will issue a rule to describe more fully the needs and requirements for taking such exemptions on such information.

Dated: July 14, 2009.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E9–17320 Filed 7–20–09; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1850–DR; Docket ID FEMA–2008–0018]

Illinois; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1850–DR), dated July 2, 2009, and related determinations.

DATES: Effective Date: July 2, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 2, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Illinois resulting from severe storms, flooding, and tornadoes during the period of May 8–9, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Illinois have been designated as adversely affected by this major disaster:

Franklin, Gallatin, Jackson, Randolph, Saline, and Williamson Counties for Public Assistance.

All counties within the State of Illinois are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator,

Federal Emergency Management Agency.

[FR Doc. E9–17217 Filed 7–20–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1838–DR; Docket ID FEMA–2008–0018]

West Virginia; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1838–DR), dated May 15, 2009, and related determinations.

DATES: *Effective Date:* June 22, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gregory W. Eaton, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Edward H. Smith as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–17223 Filed 7–20–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1844–DR; Docket ID FEMA–2008–0018]

South Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1844–DR), dated June 16, 2009, and related determinations.

DATES: *Effective Date:* July 6, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 6, 2009.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–17221 Filed 7–20–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0652]

Baton Rouge Waterways Action Plan Annex

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Coast Guard announces a public meeting to receive comments on the Baton Rouge Waterways Action Plan Annex.

DATES: A public meeting will be held on Thursday, July 30, 2009 from 8 a.m. to 11:30 a.m. and 1 p.m. to 4 p.m., and Friday, July 31, 2009 from 8 a.m. to 11:30 a.m. to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. All written comments and related material submitted after the meeting must be received by the Coast Guard on or before August 31, 2009.

ADDRESSES: The public meeting will be held in the Louisiana Room at the State of Louisiana Department of Wildlife and Fisheries Building, 2000 Quail Drive, Baton Rouge, LA 70808, telephone (225) 765–2623. A government-issued photo identification card will be required for entrance to the building.

You may submit written comments identified by docket number USCG–2009–0652 before or after the meeting using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

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

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. Our online docket for this meeting is available on the Internet at *http://www.regulations.gov* under docket number USCG–2009–0652.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting, please call or e-mail Lieutenant Nick Parham, Chief of Prevention and Response at Coast Guard Marine Safety Unit Baton Rouge; telephone (225) 298–5400; e-mail *Nicholas.Parham@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

The meeting is intended to give the public the chance to comment on the current Baton Rouge Waterways Action Plan Annex and note concerns and improvements that could be made to create a more consistent and useful action plan. You may view the Baton Rouge Waterways Action Plan Annex at the following Web site: *http://www.uscg.mil/d8/westernrivers/default.asp.*

You may view the online docket and comments submitted thus far by going to *http://www.regulations.gov.* Once there, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0652 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this meeting by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Comments submitted after the meeting must reach the Coast Guard on or before August 31, 2009. If you submit a comment online via *http://www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility.

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).

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Nick Parham, United States Coast Guard, at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding the Baton Rouge Waterways Action Plan Annex on Thursday, July 30, 2009 from 8 a.m. to 11:30 a.m. and 1 p.m. to 4 p.m., and Friday, July 31, 2009 from 8 a.m. to 11:30 a.m. at the Louisiana Room at the State of Louisiana Department of Wildlife and Fisheries Building, 2000 Quail Drive, Baton Rouge, LA 70808, telephone (225) 765–2623. The meeting location is not accessible by public transportation. Parking is available at no cost.

A government-issued photo identification card will be required for entrance to the building. Attendees should check in at the front desk, and they will be directed to the Louisiana Room.

We will provide a written summary of the meeting and comments and place that summary in the docket.

Dated: July 9, 2009.

E.M. Stanton,

Captain, U.S. Coast Guard, Captain of the Port, New Orleans.

[FR Doc. E9–17246 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–0661]

National Offshore Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Offshore Safety Advisory Committee (NOSAC). NOSAC provides advice and makes recommendations to the Coast Guard on matters affecting the offshore industry.

DATES: Application forms should reach the Coast Guard on or before November 30, 2009.

ADDRESSES: A copy of the application form, as well as this notice, is available in our online docket, USCG–2008–0799 at *http://www.regulations.gov* and at the Coast Guard's Advisory Committee homeport Web page at: *https://homeport.uscg.mil/nosac.* You may request an application form by writing Mr. James Magill, Assistant Designated Federal Officer of NOSAC, Commandant (CG–5222), ATTN: Vessel and Facility Operations Standards, U.S. Coast Guard, 2100 Second Street, SW., STOP 7126, Washington, DC 20593–7126; by calling 202–372–1414; or by faxing 202–372–1926. Send your completed application to the Assistant Designated Federal Officer at the street address above.

FOR FURTHER INFORMATION CONTACT: Commander Patrick W. Clark, Designated Federal Officer (DSO) of NOSAC, or James M. Magill, Assistant Designated Federal Officer, telephone 202–372–1414, fax 202–372–1926.

SUPPLEMENTARY INFORMATION: NOSAC is a Federal advisory committee established under the provisions of the Federal Advisory Committee Act (FACA), (codified at 5 U.S.C.). It consists of 15 regular members who have particular knowledge and experience regarding offshore technology, equipment, safety and training, as well as environmental expertise in the exploration or recovery of offshore mineral resources. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety, Security and Stewardship regarding safety, security and rulemaking matters relating to the offshore mineral and energy industries. This advice assists the Coast Guard in developing policy and regulations and formulating the positions of the United States in advance of meetings of the International Maritime Organization.

NOSAC meets approximately twice a year, with one of these meetings being held at Coast Guard Headquarters in Washington, DC. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific issues or topics as required.

We will consider applications for five positions. These positions will begin in January 2010. Applications should reach the Coast Guard by November 30, 2009. If we do not receive sufficient qualified applicants by the deadline we may consider applications received later if they arrive within a reasonable time before we make our recommendations to the Secretary of Homeland Security.

To be eligible, applicants should have experience in one of the following categories: (1) Offshore operations, (2) diving services associated with offshore activities, (3) general public, (4) pipelaying services, or (5) deepwater ports. Please state on the application form which of the five categories you are applying for. Each member normally serves a term of 3 years or until a replacement is appointed. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the Coast Guard policy on gender and ethnic nondiscrimination, we encourage qualified men and women and members of all racial and ethnic groups to apply. The Coast Guard values diversity; all the different characteristics and attributes of persons that enhance the mission of the Coast Guard.

If you are interested in applying to become a member of NOSAC, send a completed application form to Mr. James Magill, Assistant Designated Federal Officer of NOSAC, Commandant (CG–5222), *Attn:* Vessel and Facility Operations Standards, U.S. Coast Guard, 2100 Second Street, SW., STOP 7126, Washington, DC 20593–7126; by calling 202–372–1414; or by faxing 202–372–1926. Send the application form in time for it to be received by the Assistant DFO on or before November 30, 2009.

A copy of the application form is available in the docket for this notice. To visit our online docket, go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2009–0661) in the Search box, and click ''Go''.

Dated: July 14, 2009.

Howard L. Hime,

Acting Director of Commercial Regulations and Standards, Assistant Commandant for Marine Safety, Security and Stewardship.

[FR Doc. E9–17288 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2009–N129; 10120–1112–0000–F2]

Endangered and Threatened Wildlife and Plants; Permit Application, Northern Spotted Owl, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Receipt of application for enhancement of survival permit; notice of availability of programmatic safe harbor agreement.

SUMMARY: The Oregon Department of Forestry (ODF) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit (permit) pursuant to the Endangered Species Act of 1973, as amended. The permit application includes a proposed programmatic safe harbor agreement (Agreement) between ODF, the U.S. Department of Agriculture—Natural Resources Conservation Service (NRCS), and the Service. The proposed term of the permit and Agreement is 50 years. The requested permit would authorize ODF to extend incidental take coverage with assurances through issuance of Certificates of Inclusion to eligible landowners who are willing to carry out habitat management measures that would benefit the northern spotted owl (*Strix occidentalis caurina*), which is federally listed as threatened. The covered area or geographic scope of this Agreement includes non-Federal forest lands within the range of the spotted owl in Oregon. We request comments from the public on the permit application, proposed Agreement, and related documents, which are available for review (see **ADDRESSES** below).

DATES: Comments must be received from interested parties on or before August 20, 2009.

ADDRESSES: You may submit your written comments to State Supervisor (see **SUPPLEMENTARY INFORMATION** below). Include your name and address in your comments and refer to the ''Spotted Owl Programmatic Safe Harbor Agreement.''

FOR FURTHER INFORMATION CONTACT: Richard Szlemp (see **SUPPLEMENTARY INFORMATION** below), telephone (503) 231–6179. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the draft documents by contacting the State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE., 98th Ave., Suite 100, Portland, OR 97266; telephone (503) 231–6179; facsimile (503) 231–6195; or by making an appointment to view the documents at the above address during normal business hours. You may also view the documents on the Internet at *http://www.fws.gov/oregonfwo/species/.* The

Service is furnishing this notice to provide the public, other State and Federal agencies, and interested Tribes an opportunity to review and comment of the draft documents.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the Act, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring the landowners that they will not be subjected to increased property use restrictions as a result of their efforts to either attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits for federally listed threatened species through Safe Harbor Agreements are found in 50 CFR 17.32(c). These permits allow future incidental take of any covered species above the mutually agreed upon baseline conditions for those species in accordance with the terms of the permit and accompanying agreement.

We jointly developed the proposed Agreement with ODF and NRCS for the conservation of the northern spotted owl. State of Oregon statutes give ODF the authority to enter into Stewardship Agreements with landowners who wish to voluntarily improve fish and wildlife habitat and water quality. Stewardship Agreements provide regulatory certainty to landowners in complying with State forest practice requirements. The proposed Safe Harbor Agreement is intended to compliment ODF's Stewardship Agreement program.

On March 30, 2009, NRCS announced a sign-up for the Healthy Forest Reserve Program (HFRP) in Oregon to landowners interested in promoting the recovery of threatened and endangered species, improving biodiversity, and enhancing carbon sequestration. The sign-up period closed on April 30, 2009. The HFRP is a voluntary program established for the purpose of restoring and enhancing forest ecosystems. There are two enrollment options with the HFRP in Oregon for fiscal year 2009: A 10-year restoration agreement and a permanent easement. Under a restoration agreement, participants can receive 50 percent of the cost of selected conservation practices. With a permanent easement, the HFRP pays 100 percent of the easement value and 100 percent of the cost of selected activities. Landowners continue to manage the land for timber production while maintaining habitat for spotted owls under the permanent easement. The HFRP is incorporated into the Agreement to provide an additional financial incentive for landowners to become a party to the Agreement. The future availability of funding for the HFRP will depend upon Congressional appropriations.

The area covered by this Agreement includes all non-Federal, forest-capable lands within the historic range of the spotted owl in Oregon. Sites not currently occupied by spotted owls or not containing potentially suitable habitat will have a baseline condition of zero unless a landowner is willing to accept a baseline greater than zero to support an enhanced level of conservation after the Agreement expires. Sites known to be occupied by spotted owls or that contain suitable habitat will have their baseline conditions determined on a case-by-case basis by ODF and the Service, with landowner consent. Baseline conditions will be expressed in terms of the amount (acres) and quality of habitat. Forest characteristics such as stand age, tree species composition, average diameters, number of canopy layers, average canopy closure, and number of snags will be used to reference habitat quality.

The purpose of this Agreement is to encourage private landowners to create, maintain, and enhance spotted owl habitat through forest management. The northern spotted owl was listed as a threatened species by the Service in 1990 (55 FR 26114) via a final rule published in the **Federal Register** June 26, 1990, with an effective date of July 30, 1990. One of the primary threats affecting the spotted owl is the widespread loss of suitable habitat. Spotted owls are most often found in older forests with: High canopy closure; a multi-layered/multi-species canopy; larger trees (greater than 30 inches diameter at chest height); a high incidence of those large trees with various deformities (broken tops, large cavities, e.g.); large dead trees; accumulations of woody debris on the ground, including large fallen trees; and sufficient open space below the tree canopy for spotted owls to fly. Much of the private, commercial forest land in Oregon has been previously harvested at least once and has been replanted. The even-aged forest stands that typically develop after replanting are dense, with little variation in tree spacing, tree heights, and species composition. Trees are often harvested on 40–60 year rotations, or less. This type of management does not provide the time for development of good quality spotted owl habitat, or the conditions to establish a diversity of habitat structure. This Agreement is intended to encourage landowners to voluntarily manage their forests on longer rotations and to create more structural diversity through active management that would more closely mimic natural conditions.

Under this Agreement, private lands may be enrolled through individual Stewardship Agreements between the ODF and cooperating landowners. Landowners who also participate in the HFRP will have to meet additional NRCS requirements. The duration of the Stewardship Agreements would vary depending on circumstances, but would not be less than 10 years. Cooperators will be issued a Certificate of Inclusion which will allow activities on the enrolled properties to be included within ODF's section 10(a)(1)(A) enhancement of survival permit. Cooperators may renew their Stewardship Agreements to remain in effect for the 50-year duration of the permit. Cooperators will avoid conducting activities that could adversely impact the spotted owl's habitat during the term of their Stewardship Agreement.

Without the regulatory assurances provided through the Agreement and permit, landowners may otherwise be unwilling or reluctant to manage their lands in a way that would attract federally listed species such as the spotted owl onto their properties. The proposed Agreement is expected to provide a net conservation benefit to the spotted owl by enhancing the quality, quantity, or connectivity of forest habitat, thereby increasing the distribution, abundance, and genetic diversity of the species.

The Service has made a preliminary determination that the proposed Agreement and permit application are

eligible for a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement that is also available for public review (see **ADDRESSES**).

The Service will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1)(A) of the Act and that other applicable requirements have been satisfied. If we determine that all requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to ODF for the take of northern spotted owls, incidental to otherwise lawful activities in accordance with the terms of the Agreement. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

Dated: July 14, 2009.

Miel Corbett,

Acting State Supervisor, Fish and Wildlife Service, Oregon Fish and Wildlife Office, Portland, Oregon.

[FR Doc. E9–17281 Filed 7–20–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2009–N147; 80221–1113–0000–F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before August 20, 2009.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA, 95825 (*telephone:* 916–414–6464; *fax:* 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (*telephone:* 760–431–9440; *fax:* 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit No. TE–217119

Applicant: Carie M. Wingert, San Luis Obispo, California.

The applicant requests a permit to take (harass by survey) the California least tern (*Sterna Antillarum browni*), and take (capture, handle, and release) the giant kangaroo rat (*Dipodomys ingens*) and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) in conjunction with surveys and population monitoring studies throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–785148

Applicant: AMEC Earth and Environmental, San Diego, California.

The applicant requests an amendment to an existing permit (August 28, 2001, 66 FR 45322) to take (harass by survey, and locate/monitor nests) the California least tern (*Sterna Antillarum browni*) in conjunction with surveys and population monitoring studies throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–214148

Applicant: Patrick W. Del Pizzo, San Diego, California.

The applicant requests a permit to take (harass by survey, and locate/monitor nests) the California least tern (*Sterna Antillarum browni*) in conjunction with surveys and population monitoring studies throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–217402

Applicant: Julie M. Love, Santa Barbara, California.

The applicant requests a permit to take (survey, capture, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–217401

Applicant: Cristina V. Slaughter, Santa Barbara, California.

The applicant requests a permit to take (survey, capture, and release) the tidewater goby (*Eucyclogobius newberryi*) and Arroyo southwestern (*Bufo microscaphus californicus*) in conjunction with surveys and population monitoring throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–781084

Applicant: Anita M. Hayworth, Encinitas, California.

The applicant requests an amendment to an existing permit (March 15, 1996, 61 FR 10779) to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–217663

Applicant: Ann M. Dalkey, Redondo Beach, California.

The applicant requests a permit to take (survey by pursuit) the Palos Verdes blue butterfly (*Glaucopsyche lygdamus*) in conjunction with surveys throughout the range of each species within the jurisdiction of the Carlsbad Fish and Wildlife Office, in California, for the purpose of enhancing its survival.

Permit No. TE–802450

Applicant: Arthur E. Davenport, Barstow, California.

The applicant requests an amendment to an existing permit (June 8, 1995, 60 FR 30314) to take (harass by survey) the southwestern willow flycatcher (*Empidonax trailli extimus*) in conjunction with surveys throughout

the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–036499

Applicant: National Park Service, Golden Gate National Recreation Area, Santa Barbara, California.

The applicant requests an amendment to an existing permit (February 12, 2001, 66 FR 9877) to take (translocate) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with restoration and population monitoring throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–218630

Applicant: Irena M. Mendez, Santa Monica, California.

The applicant requests a permit to take (survey by pursuit) the El Segundo Blue butterfly (*Euphilotes battoides allyni*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–045153

Applicant: Dustin S. Janeke, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys; and take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–175386

Applicant: USGS, California Cooperative Research Unit, Arcata, California.

The applicant requests an amendment to an existing permit (August 13, 2008, 73 FR 47206) to take (survey, capture, handle, release, remove from wild and kill) the Lost river sucker (*Deltistes luxatus*) in conjunction with surveys, research, and demographic studies in Klamath County, Oregon, for the purpose of enhancing their survival.

Permit No. TE–219638

Applicant: Angela M. Calderaro, Rancho Cordova, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys; and take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys and research throughout the range of each species in California for the purpose of enhancing their survival.

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Dated: July 15, 2009.

Diane Elam,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. E9–17270 Filed 7–20–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–956–1420–BJ; Groups 32–37, Maine]

Eastern States: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Maine

SUMMARY: The Bureau of Land Management (BLM) will file the plats of survey of the lands described below in the BLM–Eastern States Office in Springfield, Virginia, 30 calendar days from the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. *Attn:* Cadastral Survey.

SUPPLEMENTARY INFORMATION: The surveys were requested by the Bureau of Indian Affairs.

The lands surveyed are:

Maine

The plat of survey represents the dependent resurvey and survey of the boundaries of land held in trust for the Houlton Band of Maliseet Indians, described in two deeds recorded in the Southern Aroostook Registry of Deeds in deed book 2144, page 198 and deed book 2487, page 114, in Littleton and Houlton, Aroostook County, in the State of Maine, for Group 32, and was accepted June 30, 2009.

The plat of survey represents the dependent resurvey and survey of the boundaries of Lot 15, Ranges 3 and 4, East of the Meduxnekeag River, Northern Division of Houlton, held in trust for the Houlton Band of Maliseet Indians, in Houlton, Aroostook County, in the State of Maine, for Group 33, and was accepted June 30, 2009.

The plat of survey represents the dependent resurvey of the boundaries of Lot 7, Range 2, Southern Division of Littleton, held in trust for the Houlton Band of Maliseet Indians, in Littleton, Aroostook County, in the State of Maine, for Group 34, and was accepted June 30, 2009.

The plat of survey represents the dependent resurvey of the boundaries of land held in trust for the Aroostook Band of Micmacs, part of Lots 11 and 12, Plan of Bridgewater, North half, Aroostook County, in the State of Maine, for Group 35, and was accepted June 30, 2009.

The plat of survey represents the dependent resurvey of the boundaries of lands of the Aroostook Band of Micmacs, on the former Loring Air Force Base, known as the Connor Family Housing Annex and the Water Supply Area, in Connor Township, Aroostook County, in the State of Maine, for Group 36, and was accepted June 30, 2009.

The plat of survey represents the dependent resurvey of the boundaries of the East half of Lot 78, in Township H, Range 2, West of the East line of the State, held in trust for the Aroostook Band of Micmacs, in what is presently part of Caribou, Aroostook County, in the State of Maine, for Group 37, and was accepted June 30, 2009.

We will place copies of the plats we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against a survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plats until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: July 13, 2009.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. E9–17292 Filed 7–20–09; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw approximately 633,547 acres of public lands and 360,002 acres of National Forest System lands for up to 20 years from location and entry under the Mining Law of 1872, 30 U.S.C. 22 *et seq.,* on behalf of the Bureau of Land Management and the United States Forest Service. The purpose of the withdrawal, if determined to be appropriate, would be to protect the Grand Canyon watershed from adverse effects of locatable hardrock mineral exploration and mining. This notice segregates the lands from location and entry under the 1872 Mining Law for up to 2 years to allow time for various studies and analyses, including appropriate National Environmental Policy Act analysis. These actions will support a final decision on whether or not to proceed with a withdrawal. The lands will remain open to the mineral leasing, geothermal leasing, mineral materials, and public land laws.

DATES: Comments and requests for a public meeting must be received by October 19, 2009.

ADDRESSES: Comments and meeting requests should be sent to the District Manager, Bureau of Land Management, Arizona Strip District Office, 345 East Riverside Drive, St. George, Utah 84790–9000, or Forest Supervisor, Forest Service, Kaibab National Forest, 800 South Sixth St., Williams, Arizona 86046.

FOR FURTHER INFORMATION CONTACT: Scott Florence, District Manager, BLM Arizona Strip District, 435–688–3200, or Michael Williams, Forest Supervisor, Kaibab National Forest, 928–635–8200.

SUPPLEMENTARY INFORMATION: The applicant is the Bureau of Land Management at the address above and its petition/application requests the Secretary of the Interior to withdraw, subject to valid existing rights, the following public lands and National Forest System lands from location and entry under the 1872 Mining Law, but not the mineral leasing, geothermal leasing, mineral materials laws, or public land laws: All the Federal lands identified in the townships below, and all non-Federal lands within the exterior boundaries described below that are subsequently acquired by the Federal government, to the boundary of the Grand Canyon National Game Preserve, including the overlap of the withdrawal for the Kanab Creek Wilderness, as depicted on the map entitled ''Petition/Application for Withdrawal'' available from the BLM Arizona Strip District office and the FS Kaibab National Forest office at the addresses listed above.

Public Lands

Gila and Salt River Meridian, Arizona

Tps. 40 and 41 N., R. 1E.,
Tps. 38 and 40 N., R. 3 E., to the boundary of the Vermilion Cliffs National Monument,
Tps. 36 to 38 N., Rs. 4 and 5 E., to the boundary of the Vermilion Cliffs National Monument,
Tps. 37 to 39 N., R. 6 E., to the boundary of the Vermilion Cliffs National Monument,
T. 39 N., R. 7 E., to the boundary of the Vermilion Cliffs National Monument,
Tps. 38 to 41 N., R. 1 W.,
Tps. 38 to 40 N., R. 2 W.,
Tps. 36 to 40 N., R. 3 W.,
Tps. 35 to 40 N., Rs. 4 and 5 W.,
Tps. 35 to 39 N., Rs. 6 and 7 W.,

The areas described contain approximately 633,547 acres of public lands in Coconino and Mohave Counties.

National Forest System Lands

Kaibab National Forest

Gila and Salt River Meridian, Arizona.

North Kaibab Ranger District

Tps. 37 to 40 N., R. 3 E., to the boundary of the Vermilion Cliffs National Monument,
Tps. 36 and 37 N., R. 4 E.,
T. 36 N., R. 5 E.,
T. 38 N., R. 3 W.,
Tps. 36 and 37 N., Rs. 3 and 4 W.,

Tusayan Ranger District

Tps. 28 to 31 N., R. 1 E.,
Tps. 28 to 30 N., R 2 E.,
Tps. 27 to 30 N., Rs. 3 to 6 E.,
Tps. 31 and 32 N., R 1 W.,

The areas described contain approximately 360,002 acres of National Forest System lands in Coconino and Mohave Counties.

The total areas described aggregate approximately 993,549 acres of both public and National Forest System lands in Coconino and Mohave Counties located adjacent to the Grand Canyon National Park in Arizona. The total non-Federal lands within the area aggregate approximately 85,673 acres in Coconino and Mohave Counties.

The Secretary of the Interior has approved the Bureau of Land Management's petition for approval to file its withdrawal application. The Secretary's approval of the petition constitutes his proposal to withdraw the subject lands. The Forest Service has consented to proposing the withdrawal of lands under its administrative jurisdiction.

The purpose of the withdrawal, if determined to be appropriate, would be to protect the Grand Canyon watershed from adverse effects of locatable hardrock mineral exploration and mining for up to a 20-year period, which is the maximum allowable for a withdrawal aggregating more than 5,000 acres.

The use of a right-of-way, interagency, or cooperative agreement, or surface management by the Bureau of Land Management under 43 CFR 3715 and 3809 regulations and by the Forest Service under 36 CFR 228 would not adequately constrain nondiscretionary uses which could result in permanent loss of significant values and irreplaceable resources at the site.

There are no suitable alternative sites for the withdrawal.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

Records relating to the application may be examined by contacting the BLM District Manager at the above address or by calling 435–688–3200 or the Forest Supervisor, Kaibab National Forest, 800 South Sixth Street, Williams, AZ 86046 or by calling 928–635–8200.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM District Manager at the address noted above.

Comments including names and street addresses of respondents will be available for public review at the BLM Arizona Strip District Office at the address noted above, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under

the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that one or more public meetings will be held in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM District Manager no later than October 19, 2009. A notice of the time and place of any public meetings will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

This application/proposal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands described in this notice will be segregated from location and entry under the 1872 Mining Law, unless the application/proposal is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or other discretionary land use authorizations may be allowed with the approval of an authorized officer of the Bureau of Land Management or Forest Service during the segregative period.

Authority: 43 CFR 2310.3–1.

Dated: July 16, 2009.

Mike Pool,

Acting Director, Bureau of Land Management.

[FR Doc. E9–17293 Filed 7–20–09; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'')

Notice is hereby given that on July 15, 2009, a proposed Consent Decree in *United States* v. *Landia Chemical Company et al.,* Civil Action No. 8:09–cv–01325–VMC–TBM, was lodged with the United States District Court for the Middle District of Florida.

The Consent Decree resolves claims brought by the United States, on behalf of the United States Environmental Protection Agency (''EPA''), against seven parties (''Settling Defendants'') under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607. In its Complaint, filed concurrently with the Consent Decree, the United States sought injunctive relief in order to address the release or threatened release of hazardous substances at the Landia Chemical Company Site in Lakeland, Polk County, Florida, along with the recovery of costs the United States incurred for response activities undertaken at the Site.

Under the Consent Decree, the Settling Defendants—Landia Chemical Company, Inc.; Agrico Chemical Company; BASF Sparks LLC; PCS Joint Venture, Ltd.; Sylvite Terminal & Distribution LLC; Billy G. Mitchell; and Walter G. Grahn—will implement the remedy selected by EPA for the Site, including a final action to remediate soil contamination and an interim action to address groundwater contamination. The Consent Decree also requires the Settling Defendants to pay any future response costs above $796,454.46 incurred by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Landia Chemical Company, Inc. et al.,* D.J. Ref. No. 90–11–3–09147.

The Consent Decree may be examined at the Office of the United States Attorney, Middle District of Florida, 400 N. Tampa Street, Suite 3200, Tampa, FL 33602, and at U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, Georgia, 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $59.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email 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, Environment and Natural Resources Division.

[FR Doc. E9–17226 Filed 7–20–09; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–067)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Jasmeet Seehra, Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA will collect information to determine which applicants meet required selection criteria and to what extent. Ten secondary educators from institutions nation-wide will be selected to participate in the Airborne Research Experience for Educators (AREE) project based on their experience and educational background.

II. Method of Collection

Applicants will complete an online application hosted on the AREE Web site. The application form can be downloaded using Adobe software and submitted electronically using the e-mail submit button located on the form. The collection of information from the application, resume, and letters of reference will all occur electronically.

III. Data

Title: Airborne Research Experience for Educators (AREE) Application.

OMB Number: 2700–0137.

Type of review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 25 hours.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Walter Kit,

NASA Clearance Officer.

[FR Doc. E9–17306 Filed 7–20–09; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–068)]

Review of U.S. Human Space Flight Plans Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Review of U.S. Human Space Flight Plans Committee.

DATES: Wednesday, August 5, 2009, 8 a.m.–12 noon (EDT).

ADDRESSES: Carnegie Institution of Washington, 1530 P Street, NW., Washington, DC 20005, Telephone: (202) 939–1138.

FOR FURTHER INFORMATION CONTACT: Mr. Philip R. McAlister, Office of Program Analysis and Evaluation, National Aeronautics and Space Administration, Washington, DC 20546. Phone 202–358–0712.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. The agenda topics for the meeting include:

- Vision for Space Exploration Background.
- Mars Society Views on U.S. Human Space Flight Program.
- Science-related Briefings.
- Arianespace Briefing.
- Public Comment.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–17305 Filed 7–20–09; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0270]

Notice; Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information or Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information or Safeguards Information

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 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 notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI) or safeguards information (SGI).

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 Title 10 of the Code of Federal Regulations (10 CFR), section 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 and Directives Branch (RDB), 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. Written comments may also be faxed to the RDB at 301–492–3446. 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.

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, or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002–0309.html.* 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.html.* 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 an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *hearing.docket@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 using the agency's adjudicatory e-filing system 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 toll-free help line number is 1–866–672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, 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 request and/or petition 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, the 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 electronically 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.*

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: May 28, 2009.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise Technical Specification (TS) 6.7.6.k, Steam Generator (SG) Program, to exclude a portion of the tubes below the top of the SG tube sheet from periodic SG tube inspections. The change also adds additional reporting criteria to TS 6.8.1.7, Steam Generator Tube Inspection Report. This permanent change is supported by Westinghouse Electric Company, LLC Topical Report WCAP–17071–P, ''H*: Alternate Repair Criteria for the Tubesheet Expansion Region in Steam Generators with Hydraulically Expanded Tubes (Model F).''

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. *The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator (SG) inspection and reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the SG tube inspection and repair criteria are the steam generator tube rupture (SGTR) event, the steam line break (SLB), and the feed line break (FLB) postulated accidents.

During the SGTR event, the required structural integrity margins of the SG tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the presence of the tubesheet and the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, and from the differential pressure between the primary and secondary side, and tubesheet rotation. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded [pressurized-water reactor] PWR Steam Generator Tubes,'' and Technical Specification 6.7.6.k, are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural and leakage integrity of the SG tubes consistent with the performance criteria of Technical Specification 6.7.6.k. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from tube degradation below the proposed limited inspection depth is limited by the tube-to-tubesheet crevice. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary-to-secondary leakage flow during the event as primary-to-

secondary leakage flow through a postulated tube that has been pulled out of the tubesheet is essentially equivalent to a severed tube. Therefore, the proposed change does not result in a significant increase in the consequences of a SGTR.

The probability of a SLB is unaffected by the potential failure of a steam generator tube as the failure of tube is not an initiator for a SLB event.

The leakage factor of 2.02 for Seabrook Station, for a postulated SLB/FLB, has been calculated as shown in Table 9–7 of [WCAP–17071–P]. However, NextEra will apply a factor of 2.03 to the normal operating leakage associated with the tubesheet expansion region in the condition monitoring (CM) and operational assessment (OA). The leakage factor of 2.03 is a bounding value for all SGs, both hot and cold legs, in Table 9–7 of [WCAP–17071–P]. Through application of the limited tubesheet inspection scope, the existing operating leakage limit provides assurance that excessive leakage (*i.e.,* greater than accident analysis assumptions) will not occur. The assumed accident induced leak rate is 500 gallons per day (gpd) during a postulated steam line break in the faulted loop. Using the limiting leak rate factor of 2.03, this corresponds to an acceptable level of operational leakage of 246 gpd. Therefore, the technical specification leak rate limit of 150 gpd provides significant added margin against the 500 gpd accident analysis leak rate assumption.

No leakage factor will be applied to the locked rotor or control rod ejection transients due to their short duration.

For the CM assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 2.03 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the OA, the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 2.03 and compared to the observed operational leakage.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. *The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.*

The proposed change that alters the steam generator inspection and reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. *The proposed changes do not involve a significant reduction in the margin of safety.*

The proposed change limits the portion of the tube that must be inspected and repaired to the portion of the tube within the tubesheet necessary to maintain structural and leakage integrity under both normal and accident conditions. WCAP–17071–P identifies the specific inspection depth below which any type tube degradation [is] shown to have no impact on the performance criteria in [Nuclear Energy Institute] NEI 97–06 Rev. 2, ''Steam Generator Program Guidelines.''

The proposed change that alters the steam generator inspection and reporting criteria maintains the required structural margins of the SG tubes for both normal and accident conditions. Nuclear Energy Institute 97–06, ''Steam Generator Program Guidelines,'' and NRC Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes,'' are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary,'' by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, Westinghouse WCAP–17071–P defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage as described in WCAP–17071–P shows that significant margin exists between an acceptable level of leakage during normal operating conditions (246 gpd) that ensures meeting the SLB accident-induced leakage assumption and the technical specification leakage limit of 150 gpd.

Therefore, the proposed change does not involve a significant reduction in any 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, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

NRC Branch Chief: Harold Chernoff.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 2, 2009.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Program,'' to exclude portions of the tube below the top of the steam generator tubesheet from periodic SG tube inspections. In addition, this amendment request proposes to revise TS 5.6.10, ''Steam Generator Tube Inspection Report,'' to provide reporting requirements specific to the permanent alternate repair criteria. This permanent change is supported by Westinghouse Electric Company LLC, WCAP–17071–P, ''H*: Alternate Repair Criteria for the Tubesheet Expansion Region in Steam Generators with Hydraulically Expanded Tubes (Model F).''

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 previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator inspection criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the steam generator tube inspection and repair criteria are the steam generator tube rupture (SGTR) event and the feedline break (FLB) postulated accidents.

During the SGTR event, the required structural integrity margins of the steam generator tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the presence of the tubesheet and constraint provided by the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, from the differential pressure between the

primary and secondary side, and tubesheet deflection. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes,'' and TS 5.5.9 are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural and leakage integrity of the steam generator tubes consistent with the performance criteria in TS 5.5.9. Therefore, the proposed change results in no significant increase in the probability of the occurrence of [an] SGTR accident.

At normal operating pressures, leakage from tube degradation below the proposed limited inspection depth is limited by the tube-to-tubesheet joint. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary to secondary leakage flow during the event as primary to secondary leakage flow through a postulated tube that has been pulled out of the tubesheet is essentially equivalent to a severed tube. Therefore, the proposed changes do not result in a significant increase in the consequences of [an] SGTR.

The probability of [an] SLB [steam line break] is unaffected by the potential failure of a steam generator tube as the failure of the tube is not an initiator for [an] SLB event.

The leakage factor of 2.03 for WCGS, for a postulated SLB/FLB, has been calculated as shown in Table 9–7 of WCAP–17071–P and will be applied to the normal operating leakage associated with the tubesheet expansion region in the condition monitoring (CM) and operational assessment (OA). The leakage factor of 2.03 is a bounding value for all steam generators, both hot and cold legs, in Table 9–7 of [WCAP–17071–P]. Through application of the limited tubesheet inspection scope, the existing operating leakage limit provides assurance that excessive leakage (i.e., greater than accident analysis assumptions) will not occur. The accident induced leak rate limit for WCGS is 1.0 gpm [gallons per minute]. The TS 3.4.13, ''RCS [Reactor Coolant System] Operational LEAKAGE,'' operational leak rate limit is 150 gpd [gallons per day] (0.1 gpm) through any one steam generator. Consequently, accident leakage is approximately 10 times the allowable leakage, if only one steam generator is leaking. Using [an] SLB/FLB overall leakage factor of 2.03, accident induced leakage is approximately 0.5 gpm, if all 4 steam generators are leaking at 150 gpd at the beginning of the accident. Therefore, significant margin exists between the conservatively estimated accident induced leakage and the allowable accident leakage (1.0 gpm).

No leakage factor will be applied to the locked rotor or control rod ejection transients due to their short duration.

For the CM assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 2.03 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the OA, the difference in the leakage between the allowable leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 2.03 and compared to the observed operational leakage.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change that alters the steam generator inspection and reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed change defines the portion of the tube that must be inspected and repaired. WCAP–17071–P identifies the specific inspection depth below which any type tube degradation shown to have no impact on the performance criteria in NEI [Nuclear Energy Institute] 97–06, Revision 2.

The proposed change that alters the steam generator inspection and reporting criteria maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI 97–06, Revision 2, and RG 1.121, are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC [U.S. Nuclear Regulatory Commission] for meeting GDC [General Design Criterion] 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary,'' by reducing the probability and consequences of [an] SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation the probability and consequences of [an] SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially-oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially-oriented cracking, WCAP–17071–P, defines a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary to secondary leakage during all plant conditions. Using the methodology for determining leakage as described in WCAP–17071–P, it is shown that significant margin exists between conservatively estimated accident induced leakage and the allowable accident leakage (1.0 gpm) if all four steam generators are assumed to be leaking at the TS leakage limit at the beginning of the design basis accident.

Therefore, the proposed change does not involve a significant reduction in any 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: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

1. This order contains instructions regarding how potential parties to the proceedings listed above may request access to documents containing sensitive unclassified information (SUNSI and SGI). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. The intent of this order is to make those requirements more specific to this proceeding, but nothing in this order is intended to conflict with those regulations.

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late

filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *hearing.docket@nrc.gov* and *ogcmailcenter.resource@nrc.gov,* respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. Pursuant to 10 CFR 73.22(b), no person may have access to SGI without first being determined to be trustworthy and reliable based on a background check. Accordingly, if the requested information is for SGI, Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' and Form FD–258 (fingerprint card)—completed by any individual who would have access to SGI if the request is granted—must be submitted. For Form SF–85, the requestor(s) should only complete sections 1–11, the certification and the authorization for release. For security reasons, Form SF–85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–492–3524.[2] The other completed form must be signed in original ink, accompanied by a check or money order payable in the amount of $200.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the:

Office of Administration, Security Processing Unit, Mail Stop TWB–05 B32M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a Federal Bureau of Investigation criminal history records check. **Note:** Copies of these forms do not need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.,* indispensable) for the proposed recipient to proffer and adjudicate a specific contention in this NRC proceeding[3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, or education) to effectively utilize the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable in accordance with 10 CFR 73.22(b). The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems meet the requirements of 10 CFR 73.22. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[4] Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after

[1] See footnote 6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.
Administration, Security Processing Unit, Mail Stop TWB–05 B32M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0012.

[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[5] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within ten (10) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within ten (10) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within ten (10) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 15th day of July 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) in This Proceeding

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of proposed action and opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need,'' ''need to know,'' or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

[6] As of October 15, 2007, the NRC's final ''E-Filing Rule'' became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

Day	Event/activity
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	*If access granted:* Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E9–17243 Filed 7–20–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection; Notice of Meeting

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on August 18, 2009, in the Commission Hearing Room, 11555 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, August 18, 2009, 8:30 a.m.–12 p.m.

The Subcommittee will review draft final Revision 2 to Regulatory Guide 1.189, ''Fire Protection for Nuclear Power Plants.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Nuclear Energy Institute, and other interested persons regarding these matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Peter Wen (*telephone:* 301–415–2832, e-mail: *Peter.Wen@nrc.gov*), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the Designated Federal Official 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Designated Federal Official 1 day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official (DFO) between 7:30 a.m. and 5:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the DFO at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: July 15, 2009.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–17289 Filed 7–20–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the Subcommittee on Digital Instrumentation and Control Systems; Notice of Meeting

The ACRS Subcommittee on Digital Instrumentation and Control Systems (DI&C) will hold a meeting on August 19–21, 2009, in the Commission Hearing Room, 11555 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 19, 2009, 8:30 a.m.–5 p.m.

Thursday, August 20, 2009, 8:30 a.m.–5 p.m.

Friday, August 21, 2009, 8:30 a.m.–3 p.m.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and the industry regarding several digital instrumentation and control systems issues: the Digital Instrumentation and Control Plan 2010–2013, Interim Staff Guidances (ISGs) on fuel facilities and licensing process, EPRI reports on operating experience and Diverse Actuation Systems Risk and Benefits, and other DI&C related topics. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Christina Antonescu (telephone: 301–415–6792, *e-mail: cea1@nrc.gov*), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty five hard copies of each presentation or handout should be provided to the Designated Federal Official 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Designated Federal Official 1 day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a

CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official (DFO) between 8:45 a.m. and 5:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the DFO at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: July 14, 2009.

Antonio F. Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–17290 Filed 7–20–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on ESBWR; Notice of Meeting

The ACRS Subcommittee on the Economic Simplified Boiling Water Reactor (ESBWR) will hold a meeting on August 21, 2009, in the Auditorium, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, August 21, 2009, 8:30 a.m.–5 p.m.

The Subcommittee will review the Safety Evaluation Report with Open Items associated with the North Anna Combined License Application referencing the ESBWR design. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Dominion Virginia Power, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Christopher Brown (*telephone:* 301–415–7111, e-mail: *Christopher.Brown@nrc.gov*), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the Designated Federal Official 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Designated Federal Official 1 day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official (DFO) between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the DFO at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: July 15, 2009.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–17256 Filed 7–20–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) will hold a meeting on August 18, 2009, in the Commission Hearing Room, 11555 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, August 18, 2009—1 p.m.–5 p.m.

The Subcommittee will review Draft Regulatory Guide 1.205 (DG–1218), ''Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,'' and proposed Standard Review Plan Section 9.5.1.2, ''Risk-Informed and Performance-Based Fire Protection Program.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Nuclear Energy Institute, Electric Power Research Institute, and other interested persons regarding these matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Girija S. Shukla (*telephone:* 301–415–6855, e-mail: *Girija.Shukla@nrc.gov*), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the Designated Federal Official 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Designated Federal Official 1 day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Designated Federal Official with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73 FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official (DFO) between 7:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the DFO at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: July 13, 2009.

Antonio F. Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–17291 Filed 7–20–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of July 20, 27, August 3, 10, 17, 24, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of July 20, 2009

Thursday, July 23, 2009

1:25 p.m.
Affirmation Session (Public Meeting) (Tentative)
a. Southern Nuclear Operating Co. (Vogtle Electric Generating Plant, Units 3 and 4), LBP–09–3 (Ruling on Standing and Contention Admissibility); Virginia Electric and Power Co. (North Anna Unit 3), LBP–08–15 (Ruling on Standing and Contention Admissibility) (Tentative).
b. Draft Notice and Order for Areva Enrichment Services, LLC (Tentative).

Week of July 27, 2009—Tentative

There are no meetings scheduled for the week of July 27, 2009.

Week of August 3, 2009—Tentative

There are no meetings scheduled for the week of August 3, 2009.

Week of August 10, 2009—Tentative

There are no meetings scheduled for the week of August 10, 2009.

Week of August 17, 2009—Tentative

There are no meetings scheduled for the week of August 17, 2009.

Week of August 24, 2009—Tentative

There are no meetings scheduled for the week of August 24, 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 electronically to 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), or send an email to *darlene.wright@nrc.gov.*

Dated: July 16, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–17378 Filed 7–17–09; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–48 and CP2009–49; Order No. 250]

New Competitive Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add two additional Global Plus 2 contracts to the Competitive Product List. This notice addresses procedural steps associated with these filings.

DATES: Comments are due July 23, 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. Background
II. Notice of Filing
III. Ordering Paragraphs

I. Background

On July 13, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3633 and 39 CFR 3015.5, announcing that it has entered into two additional Global Plus 2 contracts, which it states fit within the previously established Global Plus 2 Contracts product.[1] The Postal Service states that the instant contracts are functionally equivalent to previously submitted Global Plus 2 contracts, are filed in accordance with Order No. 112 and are supported by Governors' Decision No. 08–10 filed in Docket No. MC2008–7.[2] Notice at 1.

The Notice also states that in Docket No. MC2008–7, the Governors established prices and classifications for competitive products not of general applicability for Global Plus 2 contracts. The Postal Service relates that the instant contracts are the immediate successor contracts to those in Docket Nos. CP2008–16 and CP2008–17, which will expire soon, and which the Commission found to be functionally equivalent in Order No. 112. The Postal Service contends that the instant contracts should be included within the Global Plus 2 product on the Competitive Product List. *Id.* In support, the Postal Service has filed redacted versions of each contract and related materials as Attachments 1–A and 1–B. Redacted versions of the certified statements required by 39 CFR 3015.5 are included as Attachments 2–A and 2–B, respectively. The Postal Service states that the contracts should be included within the Global Plus 2 product and requests that the instant contracts be considered the ''baseline contracts for future functional equivalency analyses concerning this product.'' *Id.* at 2.

The instant contracts. The Postal Service filed the instant contracts pursuant to 39 CFR 3015.5. The contracts become effective August 1, 2009, unless regulatory reviews affect that date, and have a one-year term.

The Postal Service maintains that certain portions of each contract and certified statements required by 39 CFR 3015.5(c)(2), names and identifying information of the Global Plus 2 customers, related financial information, portions of the certified statements which contain costs and pricing as well as the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 3.

The Postal Service asserts the contracts are functionally equivalent because they share similar cost and market characteristics and should be classified as a single product. *Id.* at 3. It states that while the precursor contracts filed in Docket Nos. CP2008–16 and CP2008–17 exhibited minor distinctions based on differences in customers' negotiations, business needs or relationship with the Postal Service, the new versions of the agreements are identical to one another. *Id.* at 4.

The Postal Service also states that the instant contracts' customers are the

[1] Notice of the United States Postal Service of Filing Two Functionally Equivalent Global Plus 2 Negotiated Service Agreements, July 13, 2009 (Notice).

[2] *See* Docket Nos. MC2008–7, CP2008–16 and CP2008–17, Order Concerning Global Plus 2 Negotiated Service Agreements, October 3, 2008 (Order No. 112).

same Postal Qualified Wholesalers (PQWs) as the parties to the contracts in Docket Nos. CP2008–16 and CP2008–17. Even though some terms and conditions of the contracts have changed, it states the essence of the service to the PQW customers is offering price-based incentives to commit large amounts of mail volume or postage revenue for Global Bulk Economy (GBE) and Global Direct (GD).[3]

The Postal Service indicates that the instant contracts have material differences which include removal of retroactivity provisions, explanations of price modification as a result of currency rate fluctuations or postal administration fees; removal of language on enforcement of mailing requirements; and restructuring of price incentives, commitments, penalties and clarification of continuing contractual obligations in the event of termination.

The Postal Service maintains these differences only add detail or amplify processes included in prior Global Plus 2 contracts. It contends because the contracts have the same cost attributes and methodology as well as similar cost and market characteristics, the differences do not affect the fundamental service being offered or the essential structure of the contracts. *Id.* at 8. It states the contracts are substantially similar both to one another and to the precursor Global Plus 2 contracts. Therefore, it asserts these contracts are ''functionally equivalent in all pertinent respects.'' *Id.* at 8.

II. Notice of Filing

The Commission establishes Docket Nos. CP2009–48 and CP2009–49 for consideration of the matters related to the contracts identified in the Postal Service's Notice.

Interested persons may submit comments on whether the instant contracts are consistent with the policies of 39 U.S.C. 3632, 3622, or 3642. Comments are due no later than July 23, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. CP2009–48 and CP2009–49 for consideration of the issues raised in these dockets.

2. Comments by interested persons on issues in these proceedings are due no later than July 23, 2009.

3. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

Issued: July 16, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–17420 Filed 7–20–09; 8:45 am]

BILLING CODE 7710–FW–P

[3] The Postal Service states the commitments also account for International Priority Airmail (IPA), International Surface Air Lift (ISAL), Express Mail International (EMI), and Priority Mail International (PMI) items mailed under a separate but related Global Plus 1 contract with each customer. The Global Plus 1 contracts are the subject of a separate competitive products proceeding.

POSTAL REGULATORY COMMISSION

[Docket No. RM2009–3; Order No. 243]

Postal Rates

AGENCY: Postal Regulatory Commission.

ACTION: Notice of public forum.

SUMMARY: This document announces a public forum to address workshare discount methodologies in First-Class Mail and Standard Mail. It invites public participation in the forum, responses to views expressed at the forum, and replies to comments filed in response to Order No. 192. This document also incorporates revisions identified in a July 10, 2009 errata notice. The revisions affected only the list of commenters presented in Order No. 243.

DATES: Public forum: August 11, 2009 at 1 p.m.; responses and reply comments due: August 31, 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, at 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History,* 74 FR 50744 (March 24, 2009).

I. Introduction
II. Public Forum Issues
III. Ordering Paragraphs

I. Introduction

On March 16, 2009, the Commission issued Order No. 191 in Docket No. R2009–2 approving a set of market dominant rate changes proposed by the Postal Service. It did so with the awareness that a number of complex issues relating to the proper application of the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006), to those rates could best be resolved in a follow-on docket in which sufficient time and sufficiently flexible procedures would be available to ensure that these issues could be thoroughly examined. To that end, the Commission issued Order No. 192, also on March 16, 2009, soliciting public comment on the ''legal, factual, and economic bases'' underlying the discounts for First-Class and Standard Mail approved in Docket No. R2009–2, and any alternative workshare discount rate design and cost avoidance methodologies that participants wished to propose.[1]

The comments received on May 26 and 27, 2009 were numerous and wide-ranging.[2] Those comments include legal interpretations of the relevant portions of the PAEA, offered arguments (largely qualitative) concerning the market position of various categories of First-Class and Standard Mail, and advocate both the use or abandonment of certain traditional benchmarks used to quantify the costs avoided by various mail characteristics associated with workshare discounts. Several participants offered classification proposals designed to recognize the unique cost characteristics of various subsets of First-Class Mail. Specifically, *Stamps.com* proposed that a ''Qualified PC Postage'' mail category be established to reflect the reduced costs that would accompany single-piece First-Class Mail to which the mailer has applied CASS certified software and a full-service Intelligent Mail Barcode. *Stamps.com* Comments at 1. In addition, the officer of the Commission appointed to represent the interests of the general public (Public Representative) proposed that if the link between single-piece First-Class Mail costs and presorted First-Class Mail rates is to be abandoned, that single-piece First-Class Mail be established as a separate class of mail for rate setting purposes. Public Representative's Comments at 23–27.

It is clear from the comments that resolving some of these issues will be contingent on how others are resolved. For example, if the Commission were to agree with the Postal Service's view

[1] *See* Order No. 192, Notice of Proposed Rulemaking on Application of Workshare Discount Rate Design Principles, March 16, 2009, at 3 (Order No. 192).

[2] There were 13 commenters in response to Order No. 192. For convenience, participant comments are identified in Appendix A to this order.

that, as a legal matter, the worksharing discount standards of 39 U.S.C. 3622(e) apply only to components of individual ''products'' as defined in the Mail Classification Schedule, it would render moot any consideration of the market positions of the various First-Class and Standard Mail categories issued in Docket No. R2009–2. Similarly, if the Commission were to conclude that section 3622(e) may be applied across products, but each product at issue serves a separate and distinct market, that conclusion would dispense with the need to consider the issue of what benchmark would be most appropriate for measuring the cost avoided by the worksharing characteristics of those products. Likewise, if the Commission were to conclude that First-Class Mail may not be further subdivided for purposes of applying caps to rates, it would nullify the Public Representative's rationale for proposing to establish single-piece First-Class Mail as a separate class of mail. Because these issues are mutually dependent, they will be considered together in the current phase of this proceeding. Technical issues of how avoided costs should be calculated will be considered after the need for benchmarks has been confirmed and appropriate benchmarks have been identified.

Some of the key issues to be addressed in this docket have basic public policy dimensions. The Commission has determined that those issues might benefit from being aired in the context of a public forum. A public forum will have the advantage of allowing representatives of various interests to have a dialogue, and exchange views in a non-adversarial discussion that allows others to respond with their own supporting or contrasting views or with clarifying questions. The Commission hopes that such a forum will significantly strengthen the record on which these policy-laden decisions will be based. It envisions convening such a forum August 11, 2009, at 1 p.m. in the Commission's hearing room.

Participants will have an opportunity to file written responses both to the exchange of views at the forum and to the comments filed in response to Order No. 192 (the notice of proposed rulemaking in this docket). Those responses will be due on or before August 31, 2009. The Commission also will provide interested parties with an opportunity to address technical issues concerning how avoided costs should be modeled at a later date, when the legal, policy, and economic issues described below have been resolved.[3]

II. Public Forum Issues

There are two issues that the Commission would like to explore further in the context of a public forum. The first is the issue of whether the users of single-piece First-Class Mail are entitled to special protection under the PAEA, and, if so, whether protection should take the form of:

1. Maintaining the traditional linkage of single-piece rates to the rates charged for Presorted First-Class Mail through a suitable benchmark;

2. Establishing a separate class of single-piece First-Class Mail subject to its own rate cap;

3. Adopting a regulation that would limit the difference allowed between single-piece and presorted First-Class Mail in terms of either average revenue per piece or percent contribution to institutional costs;

4. Relying on a qualitative or subjective standard of protection, such as the ''just and reasonable'' standard of section 3622(b)(8); or

5. Other suggested forms of protection.

The second policy issue that the Commission would like the public forum to address is whether a worksharing discount should be defined as:

1. A ''pure'' presorting, prebarcoding, handling, or transportation activity that is a direct substitute for an equivalent Postal Service activity; or

2. A ''pure'' worksharing activity as described above, plus other cost-reducing mail characteristics that are facilitated by or naturally support the ''pure'' worksharing activity, *e.g.,* walk sequencing and density.

A related aspect of the second policy issue is whether a discount that reflects both cost-reducing characteristics that are directly related to a worksharing activity, and others that are indirectly related to, or unrelated to the worksharing activity:

1. Should be defined as ''worksharing'' or ''non-worksharing'' according to some rule, such as which cost-reducing effect is thought to predominate;

2. Should be unbundled so that separate discounts are developed for the worksharing and non-worksharing components; or

3. Should remain bundled, but be analytically decomposed into its worksharing and other components so that section 3622(e) standards may be applied to the worksharing component.

In addition to the broad issues described above that the Commission considers appropriate for discussion in the August 11, 2009 forum, there are several technical aspects of those issues that participants should ponder and comment upon, either in the forum itself or in the written comments that are due on August 31, 2009.

Issues specific to First-Class Mail. The assertions in the comments about the nature of markets for First-Class letters are, for the most part, qualitative. What little supporting data are offered are subject to more than one interpretation. In the next round of written comments, the Commission encourages parties to provide empirical support for their understanding of the state of the markets for single-piece and presort First-Class Mail letters. Information about attributes of smaller business mailers who can be converted (or already have been converted) by presort firms from users of single-piece into users of presorted First-Class would be especially useful. Similarly, information about how price signals influence mailers' decisions to invest in hardware, software or quality control processes to avoid postage penalties that could result from failing Postal Service acceptance tests would be particularly helpful.

Issues specific to Standard Mail. Several commenters make assertions about the market differences between Carrier Route, High Density, and Saturation mail that are largely qualitative. They assert, for example, that Saturation mailers appear to have more delivery alternatives than Carrier Route or High Density mailers. Valassis/SMC argues that private delivery is a less viable option for High Density mailers because such mailings are demographically, rather than geographically targeted. *See* Valassis/SMC Comments at 12, n.7. This would seem to indicate that the market for High Density mail is more closely related to the market for Carrier Route mail because both target specific addresses. In the next round of comments, the Commission encourages parties to provide empirical support for their understanding of the state of the markets for the former components of Enhanced Carrier Route mail.

The Commission also welcomes additional comment on how worksharing cost avoidance should be defined and measured in the context of

[3] For example, several commenters have indicated an interest in proposing modifications to established methods for modeling costs avoided by worksharing, depending on how logically prior issues have been resolved. *See* Postal Service Comments at 46–47; MMA Comments at 12; and APWU Comments at 7. Consideration of such proposals will take place at a later, appropriate time.

Standard Mail. The Commission has long concluded that to promote productive efficiency, discounts for related categories of mail with the same own-price demand elasticity should not exceed the costs that the Postal Service avoids when mailers perform worksharing. This principle is known as efficient component pricing (ECP). The Postal Service has taken the former components of the Enhanced Carrier Route subclass—Carrier Route, High Density, and Saturation mail—and redefined them as separate products. The Postal Service, however, continues to estimate an own-price elasticity for these categories as a group, and the Commission has continued to apply ECP to worksharing cost differences among these rate categories on the premise that they serve the same market and have essentially the same elasticity of demand. The Postal Service and some other commenters now contend that the High Density and Saturation categories each serve distinct markets. *See* Valpak Comments at 17–18; Valassis/SMC Comments at 10–14; and Haldi Comments at 15–16. If true, economic theory suggests that cost coverages for each of these products should reflect distinct market conditions.

If there is not sufficient empirical evidence to conclude that these categories serve separate markets, and ECP remains relevant, applying it under the current classification structure with its attendant eligibility requirements is problematic. For example, several commenters contend that the difference in cost between High Density mail and Saturation mail reflects only the effect of the density eligibility requirement, not the effect of worksharing. *See* Postal Service Comments at 29; Haldi Comments at 11; and Valassis/SMC Comments at 2.

Sequencing mail, however, appears to fit the definition of worksharing activity in section 3622(e). If the mailer does not sequence the mail, then the Postal Service must do it. A mailer's decision to sort the mail into walk-sequence order depends on the menu of rates. If a mailer were to prepare a flat-shaped Saturation mailing without sequencing it, the mailer would have to pay the 5-digit presort rate. He would not be eligible for the Carrier Route rate because line-of-travel sequencing is a prerequisite for that rate. Similarly, he would not be eligible for the High Density rate because walk-sequencing is a prerequisite for that rate.

Absent demand differences,[4] the relationship between these categories of mail suggests that the less deeply sequenced categories could serve as benchmarks from which the costs avoided by more deeply sequenced categories could be measured. For example, the 5-digit category could be a suitable cost avoidance benchmark for all of the remaining categories. Alternatively, a mailer who presents High Density or Saturation mail rather than Carrier Route mail to the Postal Service does so because the difference in his cost between sorting to line of travel and sorting to walk-sequence is less than the corresponding rate difference; otherwise, a prudent mailer would not sort the mail in walk-sequence order. Accordingly, the cost of sorting mail to the line-of-travel order as reflected in the attributable delivery cost of Carrier Route mail could be viewed as the appropriate benchmark for both High Density and Saturation mail.[5]

With respect to the relationship between High Density and Saturation mail, the Postal Service asserts that there is no worksharing content difference between the two, and therefore ECP does not apply. Although the Postal Service recognizes that there is a cost difference, it contends that it is due to density, not to worksharing activity. The observed cost difference, however, could be characterized as gains in efficiency brought about by worksharing activity, *i.e.,* the Postal Service's cost per piece of sorting mail to walk-sequence order declines as density increases.[6]

Viewed as a worksharing-related cost difference, the rate for a High Density flat would reflect the difference in attributable delivery cost between a High Density flat and a Carrier Route flat. Similarly, the rate for a Saturation flat would reflect the difference in attributable delivery cost between a Saturation flat and a Carrier Route flat. Using the same percentage passthrough for each walk-sequencing discount would be the mathematical equivalent of retaining the link between High Density and Saturation mail.

In addition to commenting on the broader, more theoretical questions discussed above, the Commission invites interested participants to comment on the following specific issues and questions:

1. What empirical evidence is there supporting the proposition that Carrier Route, High Density, and Saturation mail each serve separate markets?

2. If High Density and Saturation mail serve the same market, should the difference in worksharing unit cost between High Density and Saturation mail be subject to the standards of section 3622(e)? If the answer is no, specify why marginal worksharing cost differences are not pertinent to rate setting.

3. If Carrier Route and High Density mail serve the same market, should rates for Saturation mail be set as though it serves a separate market, even though it is not classified as a separate product?

4. What bearing does the probability of mail receiving automated or manual delivery point sequencing have on the answers to the above questions?

III. Ordering Paragraphs

It is ordered:

1. A public forum that addresses the issues described in the body of this order will be held on August 11, 2009, at 1 p.m., in the Commission's hearing room.

2. Written comments on the matters discussed at the public forum as well as the issues discussed in the comments filed in response to Order No. 192 are due on or before August 31, 2009.

3. The Secretary shall arrange for publication of this order in the **Federal Register**.

Issued: July 10, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

Appendix A—Comments on Notice of Proposed Rulemaking on Application of Workshare Discount Rate Design Principles

[4] As noted, in the past, the Commission determined that Carrier Route, High Density, and Saturation mail, as a group, share an own-price demand elasticity that is distinct from Non-carrier Route mail. For this reason, it de-linked 5-digit mail and Carrier Route mail in Docket No. MC95–1 when the former Enhanced Carrier Route (ECR) subclass was established.

[5] Using Carrier Route mail as a benchmark for letter-shaped Standard Mail is also problematic because the minimum number of pieces required for the 5-digit letter rate is 150, while the Carrier Route letter rate requires only 10 pieces.

[6] This is confirmed by Witness Shipe's testimony in Docket No. R90–1. It shows that carriers case mail at a rate of 20.6 pieces per minute for non-sequenced Carrier Route letters, 29.0 pieces for walk-sequenced High Density letters, and 41.2 pieces for Saturation letters. The corresponding numbers for flats are 10.7, 13.6 and 27.4 pieces per minute. *See* Docket No. R90–1, Direct Testimony of Thomas Shipe, USPS–T–10, Exhibit USPS–10B, at 3 and 6. This constitutes declining marginal cost.

Participant	Title	Filing date
American Postal Workers Union, AFL–CIO (APWU Comments).	Initial Presentation of American Postal Workers Union, AFL–CIO.	May 27, 2009.
Bank of America Corporation, Discover Financial Services, J.P. Morgan Chase & Co., and the American Bankers Association.	Initial Comments of Bank of America Corporation, Discover Financial Services, J.P. Morgan Chase & Co., and the Bankers Association.	May 27, 2009.
Greeting Card Association	Initial Comments of the Greeting Card Association	May 26, 2009.
John Haldi (Haldi Comments)	Statement of John Haldi, Ph.D. Concerning Workshare Discounts.	May 26, 2009.
Mail Order Association of America	Comments of Mail Order Association of America	May 26, 2009.
Major Mailers Association (MMA Comments)	Initial Comments of Major Mailers Association	May 26, 2009.
National Postal Policy Council	Comments of National Postal Policy Council	May 26, 2009.
Pitney Bowes Inc	Initial Comments of Pitney Bowes Inc	May 26, 2009.
Public Representatives (Public Representatives Comments)	Comments of the Public Representatives	May 26, 2009.
Stamps.com (Stamps.com Comments)	Initial Presentation of Stamps.com	May 26, 2009.
United States Postal Service (Postal Service Comments)	Initial Comments of the United States Postal Service	May 26, 2009.
Valassis Direct Mail, Inc. and Saturation Mailers Coalition (Valassis/SMC Comments).	Comments of Valassis Direct Mail, Inc. and Saturation Mailers Coalition.	May 26, 2009.
Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc (Valpak Comments).	Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments Regarding Standard Mail Volume Incentive Pricing Program.	May 26, 2009.

[FR Doc. E9–17286 Filed 7–20–09; 8:45 am]

BILLING CODE 7710–FW–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 20, 2009. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Secondary Participation Guaranty Agreement.

SBA Form Numbers: 1086, 1502.

Frequency: On occasion.

Description of Respondents: SBA Participating Lenders.

Responses: 530.

Annual Burden: 42,000.

Title: Applications for Business Loans.

SBA Form Numbers: 4, 4SCH–A, 4I, 4L.

Frequency: On occasion.

Description of Respondents: Applicants applying for a SBA Loan.

Responses: 21,000.

Annual Burden: 295,505.

Title: Small Business Administration (SBA) Surety Bond Guarantee (SBG) Customer Survey.

SBA Form Number: N/A.

Frequency: On occasion.

Description of Respondents: SBG Program management to access program familiarity in the general small contractor population and to help determine the potential market for SBA surety bond guarantee.

Responses: 382.

Annual Burden: 13.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9–17255 Filed 7–20–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before September 21, 2009.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Barbara Brannan, Special Assistant, Office of Surety Guarantee, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Barbara Brannan, Special Assistant, Office of Surety Guarantee 202–205–6545 *barbara.brannan@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*

SUPPLEMENTARY INFORMATION: SBA's Surety Bond Guarantee (SBG) Program was created to encourage surety companies to provide bonding for small contractors. The information collected on these forms is used to evaluate the capability and potential sources of small contractors in the SBG Program.

Title: ''Surety Bond Guarantee Assistance.''

Description of Respondents: Surety Bond Companies.

Form Number: 990, 991, 994, 994B, 994F, 994H.

Annual Responses: 17,916.

Annual Burden: 1,959.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9–17254 Filed 7–20–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11809 and # 11810]

Wisconsin Disaster # WI–00019

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of WISCONSIN dated 07/15/2009.

Incident: Severe Storms and Flooding.

Incident Period: 06/18/2009 through 06/19/2009.

DATES: *Effective Date:* 07/15/2009.

Physical Loan Application Deadline Date: 09/14/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 04/15/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kenosha, Racine.

Contiguous Counties:

Wisconsin: Milwaukee, Walworth, Waukesha.

Illinois: Lake, Mchenry.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	4.875
Homeowners without Credit Available Elsewhere	2.437
Businesses with Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500
Businesses And Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11809 6 and for economic injury is 11810 0.

The States which received an EIDL Declaration # are Wisconsin, Illinois.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

July 15, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–17252 Filed 7–20–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11811 and # 11812]

Tennessee Disaster # TN–00028

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of TENNESSEE (FEMA–1851–DR), dated 07/13/2009.

Incident: Severe Storms, Tornadoes, Straight-Line Winds, and Flooding.

Incident Period: 06/12/2009 through 06/14/2009.

DATES: *Effective Date:* 07/13/2009.

Physical Loan Application Deadline Date: 09/11/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 04/13/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/13/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fayette, Haywood, Shelby.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11811B and for economic injury is 11812B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–17253 Filed 7–20–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6704]

30-Day Notice of Proposed Information Collection: DS–158, Contact Information and Work History for Nonimmigrant Visa Applicant; OMB Control Number 1405–0144

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

* *Title of Information Collection:* Contact Information and Work History for Nonimmigrant Visa Applicant.
* *OMB Control Number:* 1405–0144.
* *Type of Request:* Extension of Currently Approved Collection.
* *Originating Office:* CA/VO.
* *Form Number:* DS–158.
* *Respondents:* Applicants for F, J, and M nonimmigrant visas.
* *Estimated Number of Respondents:* 700,000 per year.
* *Estimated Number of Responses:* 700,000 per year.
* *Average Hours per Response:* 1 hour.
* *Total Estimated Burden:* 700,000 hours per year.
* *Frequency:* Once per respondent.
* *Obligation To Respond:* Required to Obtain or Retain Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from July 21, 2009.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at (202) 395–4718. You may submit comments by any of the following methods:

* *E-mail: Katherine_T._Astrich@omb.eop.gov.* You must include the DS form number;

information collection title, and OMB control number in the subject line of your message.

* *Mail (paper, disk, or CD–ROM submissions):* Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.

* *Fax:* (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed informational collection and supporting documents from Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E Street NW., Washington, DC 20522, who may be reached at (202) 663–2951.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

* Evaluate whether the proposed information collection is necessary to properly perform our functions.

* Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

* Enhance the quality, utility, and clarity of the information to be collected.

* Minimize the reporting burden on those who are to respond,

Abstract of proposed collection:

The DS–158 is used to collect supplemental information from students wishing to obtain a nonimmigrant visa to study in the United States.

Methodology:

Applicants may fill out the DS–158 online or print the page and fill it out by hand, and submit it in person at the time of interview.

Dated: July 15, 2009.

James R. Pritchett,

Deputy Assistant Secretary (Acting), Bureau of Consular Affairs, Department of State.

[FR Doc. E9–17264 Filed 7–20–09; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–397 (Sub-No. 7X)]

Tulare Valley Railroad Company—Abandonment Exemption—in Tulare County, CA

Tulare Valley Railroad Company (TVR), a Class III railroad, has filed a verified notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 5.9-mile line of railroad between milepost 71+2969.2 at or near Ducor and milepost 66.0 at or near Ultra, in Tulare County, CA.[1] The line traverses United States Postal Service Zip Codes 93270 and 93218.

TVR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 20, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 31, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 10, 2009, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to TVR's representative: Fritz R. Kahn, 1920 N Street, NW., (8th fl.), Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

TVR has filed a combined environmental report and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 24, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), TVR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by TVR's filing of a notice of consummation by July 21, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*HTTP://WWW.STB.DOT.GOV*.''

Decided: July 16, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–17241 Filed 7–20–09; 8:45 am]

BILLING CODE 4915–01–P

[1] TVR notes that authority to discontinue service on the line was authorized in *Tulare Valley Railroad Company—Discontinuance of Service Exemption—in Tulare County, CA,* STB Docket No. AB–397 (Sub-No. 6X) (STB served Apr. 17, 2009).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted

below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on May 14, 2009 [FR Doc. 2009–0096, Vol. 74, No. 92, Pages 22800–22801].

DATES: Comments must be submitted on or before (insert 30 days from date of publication).

FOR FURTHER INFORMATION CONTACT: Charlene Doyle, Contracting Officer's Technical Representative, Office of Regulatory Analysis and Evaluation, National Highway Traffic Safety Administration, 1200 New Jersey Ave, SE., NVS–431, Washington, DC 20590. Ms. Doyle's phone number is 202–366–1276 and her e-mail address is *charlene.doyle@dot.gov.*

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Tire Pressure Monitoring System—Special Study (TPMS–SS).

OMB Number: 2127–New.

Type of Request: Request for public comment on proposed collection of information.

Abstract: Improperly inflated tires pose a safety risk, increasing the chance of skidding, hydroplaning, longer stopping distances, and crashes due to flat tires and blowouts. In an effort to decrease the number of vehicles with improperly inflated tires, Tire Pressure Monitoring Systems (TPMS) were mandated in Federal Motor Vehicle Safety Standard (FMVSS) No. 138, so that drivers are warned when the pressure in one or more of the vehicle's tires has fallen to 25 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure is higher. Executive Order 12866 requires Federal agencies to evaluate their existing regulations and programs and measure their effectiveness in achieving their objectives. The purpose of this survey, Tire Pressure Monitoring System—Special Study (TPMS–SS), is to evaluate whether the frequency of underinflated tires has decreased in vehicles with TPMS in comparison to vehicles of the same age without TPMS. In addition, the survey will collect data on the drivers' familiarity with the type of warnings given by their TPMS and the action(s) that they have taken after the warnings have been given.

Affected Public: Individuals.

Estimated Total Annual Burden: 1,925 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

James F. Simons,

Director, Office of Regulatory Analysis and Evaluation.

[FR Doc. E9–17230 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2007–28532]

Port Dolphin Energy LLC, Port Dolphin Energy Liquefied Natural Gas Deepwater Port License Application; Final Application Public Hearing and Final Environmental Impact Statement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of availability; notice of final public hearing; request for comments; Correction.

SUMMARY: On July 13, 2009, the Maritime Administration and the U.S. Coast Guard (USCG) published in the **Federal Register** a notice of availability of the Final Environmental Impact Statement (FEIS) for the Port Dolphin Energy LLC, Port Dolphin Energy Liquefied Natural Gas Deepwater Port license application. The notice incorrectly listed the project's docket number as USCG–2006–28532. The correct docket number is USCG–2007–28532. This number should be included on all comments submitted regarding the Port Dolphin Deepwater Port license application. Additionally, the closing date for the comment period was incorrectly listed. The correct date on which comments must be received is August 27, 2009.

DATES: The date of the final public hearing is unchanged. It will be held in Palmetto, Florida on July 28, 2009. The final public hearing will be held from 5 p.m. to 7 p.m. and will be preceded by an informational open house from 3 p.m. to 4:30 p.m. The final public hearing may end later than the stated time, depending on the number of persons wishing to speak.

Material submitted in response to the request for comments on the FEIS and application must reach the Docket Management Facility by August 27, 2009.

Federal and State agencies must also submit comments, recommended conditions for licensing, or letters of no objection by September 11, 2009. Also by September 11, 2009, the Governor of Florida (the adjacent coastal state) may approve, disapprove, or notify the Maritime Administration of inconsistencies with State programs relating to environmental protection, land and water use, and coastal zone management for which the Maritime Administration may condition the license to make consistent.

The Maritime Administration must issue a record of decision (ROD) to approve, approve with conditions, or deny the DWP license application by October 26, 2009.

ADDRESSES: The public hearing in Palmetto will be held at the Manatee Convention Center, 1 Haben Blvd., Palmetto, Florida 34221; telephone: (941) 722–3244.

The FEIS, the application, comments and associated documentation are available for viewing at the Federal Docket Management System Web site: http://www.regulations.gov under docket number USCG–2007–28532.

Docket submissions for USCG–2007–28532 should be addressed to: Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

The Federal Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ray Martin, U.S. Coast Guard, telephone: 202–372–1449, e-mail: *raymond.w.martin@uscg.mil* or Chris

Hanan, U.S. Maritime Administration, telephone: 202–366–1900, e-mail: *Christopher.Hanan@dot.gov*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

(Authority 49 CFR 1.66)

Dated: July 14, 2009.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. E9–17240 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[4910–RY]

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, State Route-39 (SR–39, San Gabriel Canyon Road) Rehabilitation/Reopening Project [post mile 40.0–44.4] in the Angeles National Forest, County of Los Angeles, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 19, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Eduardo Aguilar, Branch Chief/Senior Environmental Planner, Caltrans, District 7, Division of Environmental Planning, 100 South Main Street, Suite 100, Los Angeles, CA 90012–3712, (213) 897–8492, *eduardo_aguilar@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The California Department of Transportation (Caltrans) proposes to rehabilitate and reopen a 4.4 mile segment of State Route-39 (SR–39) from post mile 40.00 to post mile 44.40, in the Angeles National Forest, in Los Angeles County. The said segment has been closed to public highway traffic since 1978 as the roadway had sustained extensive damage as a result of erosion dating from 1978 to 2005. Since 1990, the Caltrans Division of Maintenance has rebuilt the roadway at Snow Spring, making it traversable throughout the length of the project area. Maintenance activities also included the rebuilding of the roadway at Snow Spring to make it traversable throughout the length of the project area, the cleaning of drainage culverts, and the erection of a dirt berm. These past improvements have made the roadway passable, but it is constricted as it approaches its northerly terminus, and open only to emergency service vehicles.

The rehabilitation and reopening of this segment is important in the enhancement of access and services, and a reduction in response times for the United States Forest Service (USFS), the Los Angeles County Sheriff's Department, and other emergency service agencies in fire suppression, the protection of several watersheds, and search and rescue activities. The proposed project would also restore a vital traffic circulation connection between points north on State Route-2 (Angeles Crest Highway, or SR–2) and points south in the San Gabriel Valley along Interstate-210 (Foothill Freeway, or I–210). The proposed project would improve access for patrons of the numerous recreation areas within the Angeles National Forest, and provide as an economic benefit to the associated parks and businesses. The restored connection would be accessible to public highway traffic throughout the year, with seasonal closures during times of inclement weather. These closures would likely occur during the winter and early spring seasons.

A public meeting was held on regarding the proposed project on Tuesday, February 24, 2009 from 6 p.m. to 8:30 p.m at the Azusa Senior Center in Azusa, California. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Finding of No Significant Impact (FONSI) for the project, approved on May 27, 2009. The FONSI and other project records are available for review by contacting Caltrans at the addresses provided above. The Caltrans FONSI can be viewed and downloaded from the Caltrans District 7 environmental document Web site at *http://www.dot.ca.gov/dist07/resources/envdocs/*.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

—*General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal Aid-Highway Act [23 U.S.C. 109].

—*Land:* Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 219].

—*Air:* Clean Air Act 42 U.S.C. 7401–7671(q).

—*Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

—Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303].

—*Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa)–11]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

—*Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance Act and Real Property Acquisition Policies Act of 1970, as amended.

—*Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992 (k).

—*Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural

Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: July 14, 2009.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–17257 Filed 7–20–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA–139(l) Notice]

Notice of Final Federal Agency Actions on United States Highway 183 in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. § 139(l)(1). The actions relate to a proposed highway project, United States Highway 183 (US 183), north of Leander, beginning at 183A and heading north to State Highway (SH) 29 in Williamson County in the State of Texas. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. § 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 19, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Salvador Deocampo, District Engineer, Federal Highway Administration, 300 E. 8th Street, Rm. 826, Austin, Texas 78701; *telephone:* (512) 536–5950; e-mail: *salvador.deocampo@fhwa.dot.gov.* The FHWA Texas Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. You may also contact Ms. Dianna Noble, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701; *telephone:* (512) 416–2734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: US 183, north of Leander, beginning at 183A and heading north to SH 29 in Williamson County in the State of Texas. The project will be approximately 3.6 miles long and will reconstruct the existing 4-lane undivided highway to a 4-lane divided (interim, 6-lane ultimate) highway. The proposed highway will follow the existing US 183 alignment. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, dated March 2009, in the FHWA Finding of No Significant Impact (FONSI) issued on July 10, 2009, and in other documents in the FHWA project records. The EA, FONSI, and other documents in the FHWA project records file are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, section 401, section 319).

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. § 139(l)(1).

Issued on: July 15, 2009.

Salvador Deocampo,

District Engineer, Austin, Texas.

[FR Doc. E9–17314 Filed 7–20–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individuals Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of four newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Director of OFAC of the four individuals identified in this notice, pursuant to Executive Order 13224, is effective on July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001, terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On July 1, 2009, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, four individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The list of designees is as follows:

1. AMEEN AL-PESHAWARI, Fazeel-A-Tul Shaykh Abu Mohammed (a.k.a. AL-BISHAURI, Abu Mohammad Shaykh Aminullah; a.k.a. AL-PESHAWARI, Shaykh Abu Mohammed Ameen; a.k.a. AL-PESHAWARI, Shaykh Aminullah; a.k.a. AMINULLAH, Shaykh; a.k.a. AMINULLAH, Sheik; a.k.a. BISHAWRI, Abu Mohammad Amin; a.k.a. PESHAWARI, Abu Mohammad Aminullah; a.k.a. SHAYKH AMEEN), Ganj District, Peshawar, Northwest Frontier Province, Pakistan; DOB circa 1967; alt. DOB circa 1961; alt. DOB circa 1973; POB Konar Province, Afghanistan (individual) [SDGT].

2. JAVAID, Nasir (a.k.a. ABU ISHMAEL; a.k.a. JAVED, Haji Nasir; a.k.a. JAVED, Nasar; a.k.a. JAVED, Naser; a.k.a. JAVED, Nasir; a.k.a. JAVED, Qari Naser; a.k.a. JAVID, Nasser), Mansehra District, Northwest Frontier Province, Pakistan; DOB circa 1956; alt. DOB circa 1958; alt. DOB circa 1965; POB Pakistan; nationality Pakistan; From Gujranwala, Punjab province, Pakistan (individual) [SDGT].

3. MUJAHID, Mohammed Yahya (a.k.a. AZIZ, Mohammad Yahya; a.k.a. MUJAHID, Muhammad Yahya; a.k.a. MUJAHID, Yahya); DOB 12 Mar 1961; POB Lahore, Punjab Province, Pakistan; National ID No. 35404–1577309–9 (Pakistan) (individual) [SDGT].

4. QASMANI, Arif (a.k.a. ARIF UMER; a.k.a. BABA JI; a.k.a. MEMON BABA; a.k.a. QASMANI BABA; a.k.a. QASMANI, Mohammad Arif; a.k.a. QASMANI, Muhammad Arif; a.k.a. QASMANI, Muhammad 'Arif), House Number 136, KDA Scheme No. 1, Tipu Sultan Road, Karachi, Sindh, Pakistan; DOB circa 1944; nationality Pakistan (individual) [SDGT].

Dated: July 1, 2009.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E9–17248 Filed 7–20–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4

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 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution; Form 5305–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution; Notice 98–4, Simple IRA Plan Guidance

DATES: Written comments should be received on or before September 21, 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 forms, instructions, and notice should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution, Form 5304–SIMPLE; Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution, Form 5305–SIMPLE; SIMPLE IRA Plan Guidance (Notice 98–4).

OMB Number: 1545–1502.

Form Number: Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4.

Abstract: Form 5304–SIMPLE is a model SIMPLE IRA agreement that was created to be used by an employer to

permit employees who are not using a designated financial institution to make salary reduction contributions to a SIMPLE IRA described in Internal Revenue Code section 408(p). Form 5305–SIMPLE is also a model SIMPLE IRA agreement, but it is for use with a designated financial institutions. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE IRA, including information regarding the notification and reporting requirements under Code section 408.

Current Actions: There are no changes for the forms at this time. We are making this submission to renew the OMB approval. We are making this submission for renewal purposes.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations not-for-profit institutions, and individuals.

Estimated Number of Respondents: 600,000.

Estimated Time per Respondent: 3 hours, 31 minutes.

Estimated Total Annual Burden Hours: 2,113,000.

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: July 13, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–17216 Filed 7–20–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–175–86; REG–108639–99]

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, EE–175–86, (TD 8357), Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans: REG–108639–99 (NPRM) Retirement Plans; Cash or Deferred Arrangements.

DATES: Written comments should be received on or before September 21, 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 Evelyn J. Mack at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at (*Evelyn.J.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Certain Cash or Deferred Arrangements and Employee and Matching Contributions under Employee Plans: Retirement Plans; Cash or Deferred Arrangements.

OMB Number: 1545–1069.

Regulation Project Number: EE–175–86; Reg–108639–99.

Abstract: This regulation provide the public with the guidance needed to comply with sections 40(k), 401(m), and 4979 of the Internal Revenue Code. The regulation affects sponsors of plans that contain cash or deferred arrangements of employee or matching contributions, and employees who are entitled to make elections under these plans.

Current Actions: There is no changes to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and state, local, or tribal governments.

Estimated Number of Respondents: 355,500.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 1,060,000.

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: July 13, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–17209 Filed 7–20–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2000–28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2000–28, Coal Exports.

DATES: Written comments should be received on or before September 21, 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 regulations should be directed to Evelyn J. Mack at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at *(Evelyn.J.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Coal Exports.

Notice Number: 1545–1690.

Abstract: Notice 2000–28 provides guidance relating to the coal excise tax imposed by section 4121 of the Internal Revenue Code. The notice provides rules under the Code for making a nontaxable sale of coal for export or for obtaining a credit or refund when tax has been paid with respect to a nontaxable sale of coal for export.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 400.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 400.

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: July 13, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–17213 Filed 7–20–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–T

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 1041–T, Allocation of Estimated Tax Payments to Beneficiaries.

DATES: Written comments should be received on or before September 21, 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 Evelyn J. Mack at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–7381, or through the Internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation of Estimated Tax Payments to Beneficiaries.

OMB Number: 1545–1020.

Form Number: 1041–T.

Abstract: This form allows a trustee of a trust or an executor of an estimate to make an election under Internal Revenue Code section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). The IRS uses the information on the form to determine the correct amounts that are to be transferred from the fidiciary's account to the individual's account.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,000.

Estimated Number of Respondents: 59 minutes.

Estimated Total Annual Burden Hours: 990.

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: July 8, 2009.

R. Joseph Durbala,

IRS Reports Clearance Office.

[FR Doc. E9–17215 Filed 7–20–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 940 and 940–PR

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 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, and Form 940–PR, Planilla Para La Declaracion Anual Del Patrono—La Contribucion Federal Para El Desempleo (FUTA).

DATES: Written comments should be received on or before September 21, 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 forms and instructions should be directed to Evelyn J. Mack, at (202) 622–7381, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return (Form 940) and Planilla Para La Declaracion Anual Del Patrono—La Contribucion Federal Para El Desempleo (FUTA) (Form 940–PR).

OMB Number: 1545–0028.

Form Numbers: 940 and 940–PR.

Abstract: Internal Revenue Code section 3301 imposes a tax on employers based on the first $7,000 of taxable wages paid to each employee. The tax is computed and reported on Forms 940 and 940–PR (Puerto Rico employers only). IRS uses the information on Forms 940 and 940–PR to ensure that employers have reported and figured the correct FUTA wages and tax.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, individuals, or households, and farms.

Estimated Number of Responses: 1,573,920.

Estimated Time per Respondent: 57 hr., 26 min.

Estimated Total Annual Burden Hours: 90,403,900.

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: July 13, 2009.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E9–17210 Filed 7–20–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing their United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending June 30, 2009.

Last name	First name	Middle name/ initials
Christensen	Roald	Eric
Hall	Andrew	Don
Ogg	Clint	De'Wayne
Kampf	Laura	Amelia
Evans	Christopher	David
Chew	Linda	Mun-Jong
Chao	Shao-Hua	
Gilbert	Barrie	Catherine
O'Reilly	John	Harald-Thomas
Goodson	Deanna	Lou
Clay-Remson	Alverne	M
Kennedy	Cynthia	Gayle
Fu	Estefania	Hung
Sandy	Sum Kay	
Cuaron	Alfonso	

Dated: July 10, 2009.

Angie Kaminski,

Manager Team 103, Examinations Operations—Philadelphia Compliance Services.

[FR Doc. E9–17212 Filed 7–20–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Health Services Research and Development Service Scientific Merit Review Board will be held August 18–20, 2009, at the Doubletree Denver Tech, 7801 East Orchard Road, Greenwood Village, Colorado. Various subcommittees of the Board will meet during the review period. Each subcommittee meeting will be open to the public the first day for approximately one half-hour from 8 a.m. until 8:30 a.m. to cover administrative matters and to discuss the general status of the program. The remaining portion of the meetings will be closed. The closed portion of each meeting will involve discussion, examination, reference to, and oral review of the research proposals and critiques.

The purpose of the Board is to review research and development applications involving the measurement and evaluation of health care services, the testing of new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit.

Recommendations regarding funding are submitted to the Office of Research and Development's Chief Research and Development Officer.

On August 18, the Nursing Research Initiative subcommittee will convene from 8 a.m. until noon and the Career Development subcommittee will convene from 8 a.m. until 5 p.m.

On August 19, the Health Services Research A, Health Services Research B, Health Services Research C, Health Services Research D, and Health Services Research E subcommittees will convene from 8 a.m. until 5 p.m. In the afternoon, the Career Development subcommittee will reconvene from 1 p.m. until 5 p.m.

On August 20, the Health Services Research A–E subcommittees will reconvene from 8 a.m. until noon. In the afternoon, the Health Services Research F subcommittee will convene from 1 p.m. until 5 p.m.

After the subcommittees meet, there will be a debriefing provided to members of the Board. The purposes of the debriefing are to discuss the outcomes of the review sessions and to ensure the continued integrity and consistency of the review process.

During the closed portion of each meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of each meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open portion should contact Ms. Rita Lysik, Scientific Merit Review Coordinator, Health Services Research and Development Service (124R), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at least five days prior to the meeting. For further information, please call (202) 461–1524.

Dated: July 15, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–17197 Filed 7–20–09; 8:45 am]

BILLING CODE P

Federal Register

Tuesday,
July 21, 2009

Part II

Department of the Treasury
Office of the Comptroller of the Currency
Federal Reserve System
Federal Deposit Insurance Corporation
Department of the Treasury
Office of Thrift Supervision
Farm Credit Administration
National Credit Union Administration

Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance; Notice

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC 2009–0014]

FEDERAL RESERVE SYSTEM

[Docket No. R–1311]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA00

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2009–0005]

FARM CREDIT ADMINISTRATION

RIN 3052–AC46

NATIONAL CREDIT UNION ADMINISTRATION

RIN 3133–AD41

Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); Farm Credit Administration (FCA); National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The OCC, Board, FDIC, OTS, FCA, and NCUA (collectively, the Agencies) are issuing final revisions to the Interagency Questions and Answers Regarding Flood Insurance (Interagency Questions and Answers). The Agencies are also soliciting comments on proposed revisions to the Interagency Questions and Answers. To help financial institutions meet their responsibilities under Federal flood insurance legislation and to increase public understanding of the flood insurance regulation, the Agencies are finalizing new and revised guidance, as well as proposing new and revised guidance that address the most frequently asked questions about flood insurance. The revised Interagency Questions and Answers contain staff guidance for agency personnel, financial institutions, and the public.

DATES: *Effective date:* September 21, 2009. *Comment due date:* Comments on the proposed questions and answers must be submitted on or before September 21, 2009.

ADDRESSES: *OCC:* Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title ''Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *E-mail: regs.comments@occ.treas.gov*.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Communications Division, Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2009–0014'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Communications Division, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling in advance (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. R–1311, 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.Regulation.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number 3064–ZA00 by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/Regulation/laws/federal/propose.html.* Follow instructions for submitting comments on the ''Agency Web Site.''
- *E-mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN number. All comments received will be posted without change to *http://www.fdic.gov/Regulation/laws/federal/propose.html* including any personal information provided.

OTS: You may submit comments, identified by OTS–2009–0005, by any of the following methods:

- *E-mail: regs.comments@ots.treas.gov*. Please include ID OTS–2009–0005 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2009–0005.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G

Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: OTS–2009–0005.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments Electronically: OTS will post comments on the OTS Internet Site at *http://www.ots.treas.gov/?p=opencomment1.*

Viewing Comments On-Site: You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FCA: We offer a variety of methods for you to submit comments. For accuracy and efficiency reasons, we encourage commenters to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. You may also send comments by mail or by facsimile transmission. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *regcomm@fca.gov.*
- *Agency Web Site: http://www.fca.gov.* Once you are at the Web site, select ''Legal Info,'' then ''Pending Regulation and Notices.''
- *Federal eRulemaking Portal: http://www.Regulation.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- *Fax:* (703) 883–4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

NCUA: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.Regulation.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Flood Insurance, Interagency Questions & Answers'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT:

OCC: Pamela Mount, National Bank Examiner, Compliance Policy, (202) 874–4428; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Vivian Wong, Senior Attorney, Division of Consumer and Community Affairs, (202) 452–2412; Tracy Anderson, Senior Supervisory Consumer Financial Services Analyst (202) 736–1921; or Brad Fleetwood, Senior Counsel, Legal Division, (202) 452–3721, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the deaf, hard of hearing, and speech impaired only, teletypewriter (TTY), (202) 263–4869.

FDIC: Mira N. Marshall, Chief, Compliance Policy Section, Division of Supervision and Consumer Protection, (202) 898–3912; or Mark Mellon, Counsel, Legal Division, (202) 898–3884, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. For the hearing impaired only, telecommunications device for the deaf TDD: 800–925–4618.

OTS: Ekita Mitchell, Consumer Regulation Analyst, (202) 906–6451; or Richard S. Bennett, Senior Compliance Counsel, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

FCA: Mark L. Johansen, Senior Policy Analyst, Office of Regulatory Policy, (703) 993–4498; or Mary Alice Donner, Attorney Advisor, Office of General Counsel, (703) 883–4033, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. For the hearing impaired only, TDD (703) 883–4444.

NCUA: Justin M. Anderson, Staff Attorney, Office of General Counsel, (703) 518–6540; or Pamela Yu, Staff Attorney, Office of General Counsel, (703) 518–6593, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

Background

The National Flood Insurance Reform Act of 1994 (the Reform Act) (Title V of the Riegle Community Development and Regulatory Improvement Act of 1994) comprehensively revised the two Federal flood insurance statutes, the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The Reform Act required the OCC, Board, FDIC, OTS, and NCUA to revise their flood insurance regulations and required the FCA to promulgate a flood insurance regulation for the first time. The OCC, Board, FDIC, OTS, NCUA, and FCA (collectively, ''the Agencies'') fulfilled these requirements by issuing a joint final rule in the summer of 1996. *See* 61 FR 45684 (August 29, 1996).

In connection with the 1996 joint rulemaking process, the Agencies received a number of requests to clarify specific issues covering a wide spectrum of the proposed rule's provisions. The Agencies addressed many of these requests in the preamble to the joint final rule. The Agencies concluded, however, that given the

number, level of detail, and diversity of the requests, guidance addressing the technical compliance issues would be helpful and appropriate. Consequently, the Agencies decided to issue guidance to address these technical issues subsequent to the promulgation of the final rule (61 FR at 45685–86). The Federal Financial Institutions Examination Council (FFIEC) fulfilled that objective through the initial release of the Interagency Questions and Answers in 1997 (1997 Interagency Questions and Answers). 62 FR 39523 (July 23, 1997).

In response to issues that had been raised, the Agencies, in coordination with the Federal Emergency Management Agency (FEMA), released for public comment proposed revisions to the 1997 Interagency Questions and Answers. 73 FR 15259 (March 21, 2008) (March 2008 Proposed Interagency Questions and Answers). Among the changes the Agencies proposed were the introduction of new questions and answers in a number of areas, including second lien mortgages, the imposition of civil money penalties, and loan syndications/participations. The Agencies also proposed substantive modifications to questions and answers previously adopted in the 1997 Interagency Questions and Answers pertaining to construction loans and condominiums. Finally, the Agencies proposed to revise and reorganize certain of the existing questions and answers to clarify areas of potential misunderstanding and to provide clearer guidance to users.

The Agencies received and considered comments from 59 public commenters, and are now adopting the Interagency Questions and Answers, comprising 77 questions and answers, revised as appropriate based on comments received. The Agencies made nonsubstantive revisions to certain answers upon further consideration either to more directly respond to the question asked or to provide additional clarity. The Agencies are also proposing five new questions and answers for public comment. These Interagency Questions and Answers supersede the 1997 Interagency Questions and Answers and supplement other guidance or interpretations issued by the Agencies and FEMA.

For ease of reference, the following terms are used throughout this document: ''Act'' refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994 (codified at 42 U.S.C. 4001 *et seq.*). ''Regulation'' refers to each agency's current final flood insurance rule.[1]

Section-by-Section Analysis

Section I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation

The Agencies proposed this new section to address specific circumstances a lender may encounter when deciding whether a loan should be a designated loan for purposes of flood insurance. The proposed new section was intended to replace the previous section I in the 1997 Interagency Questions and Answers entitled ''Definitions'' and to incorporate existing questions from other sections addressing this topic and two new questions.

Proposed question and answer 1 addressed the applicability of the Regulation to loans made in a nonparticipating community. One commenter suggested the Agencies mention that a lender may choose to require private flood insurance per its loan agreement with the borrower, for buildings or mobile homes located outside a community in the National Flood Insurance Program (NFIP). The Agencies agree that lenders have such discretion, but do not believe that the question and answer requires further elaboration. Another commenter suggested the Agencies mention that Government Sponsored Enterprises (GSEs), such as Fannie Mae and Freddie Mac, may not purchase loans made on properties in a Special Flood Hazard Area (SFHA) in communities that do not participate in the NFIP. The Act does require GSEs to have procedures in place to ensure that purchased loans are in compliance with the mandatory purchase requirements. The Agencies do not believe that further elaboration is necessary and adopt the question and answer as proposed.

Proposed question and answer 2 explained that, upon a FEMA map change that results in a building or mobile home securing a loan being removed from an SFHA, a lender is no longer obligated to require mandatory flood insurance. However, the lender may choose to continue to require flood insurance for risk management purposes. The Agencies received one comment from an industry group suggesting the guidance in proposed question and answer 2 be amended to add language encouraging lenders to promptly remove the flood insurance requirement from a loan when the building or mobile home securing the loan is removed from an SFHA by way of a map change. The decision to require flood insurance in these instances is typically made on a case-by-case basis, depending on a lender's risk management practices. The Agencies do not believe that a blanket statement encouraging lenders to remove flood insurance in such instances is an appropriate position; therefore, the question and answer is adopted as proposed.

Proposed question and answer 3 addressed whether a lender's purchase of a loan, secured by a mobile home or building located in an SFHA in which flood insurance is available under the Act, from another lender triggers any requirements under the Regulation. The Agencies received several comments opposing the reference to safety and soundness necessitating a due diligence review prior to purchasing the loan. The Agencies note that although lenders are not required to review loans for flood insurance compliance prior to purchase, depending upon the circumstances, safety and soundness considerations may sometimes necessitate such due diligence. As such, the Agencies do not concur with the commenter's opposition and adopt question and answer 3 as proposed.

The Agencies are adopting a new question and answer 4 addressing syndicated and participation loans following question and answer 3, which deals with purchased loans, to emphasize the need for similar treatment of purchased loans and syndicated and participation loans. The new question and answer was initially proposed as question and answer 40 under section VIII. Proposed section VIII on loan syndications and participations and the accompanying question and answer are removed and the remaining sections are renumbered accordingly.

Proposed question and answer 40 explained that, with respect to loan syndications and participations, individual participating lenders are responsible for ensuring compliance with flood insurance requirements. The proposed answer further explained that participating lenders may fulfill this obligation by performing upfront due diligence to ensure that the lead lender or agent has undertaken the necessary activities to make sure that appropriate flood insurance is obtained and has adequate controls to monitor the loan(s) on an on-going basis.

The Agencies received several comments from financial institutions and industry trade groups opposing the

[1] The Agencies' rules are codified at 12 CFR part 22 (OCC), 12 CFR part 208 (Board), 12 CFR part 339 (FDIC), 12 CFR part 572 (OTS), 12 CFR part 614 (FCA), and 12 CFR part 760 (NCUA).

differences between the guidance in proposed question and answer 3 regarding the purchase of a loan and the guidance in proposed question and answer 40. A majority of the commenters argued that loan participations and syndications should be treated the same as other loan purchases for purposes of flood insurance. Several of these commenters suggested that the Agencies' proposed treatment of loan syndications and participations appeared to be inconsistent with proposed question and answer 3 pertaining to purchased loans.

In response to these comments, the Agencies are revising the relevant question and answer to reflect that, as with purchased loans, the acquisition by a lender of an interest in a loan either by participation or syndication, after that loan has been made, does not trigger the requirements of the Act and Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance. Nonetheless, as with purchased loans, depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake due diligence to protect itself against the risk of flood or other types of loss.

If a regulated lender is involved in the making of the underlying loan, but does not purchase a loan participation or syndication after the loan has been made, the flood requirements of the Act and Regulation would apply to the lender. The Agencies believe that lenders who pool or contribute funds that will be advanced simultaneously to a borrower as a loan secured by improved real estate would *all* be considered to have ''made'' the loan under the Act and Regulation. In such circumstances, each participating lender in a loan participation or syndication is responsible for compliance with the Act and Regulation. This does not mean that each participating lender must separately obtain a flood determination or monitor whether flood insurance premiums are paid. Rather, it means that each participating lender subject to Federal flood insurance requirements should perform upfront due diligence to ensure both that the lead lender or agent has undertaken the necessary activities to make sure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an on-going basis for compliance with the flood insurance requirements. The participating lender should require as a condition to the loan-sharing agreement that the lead lender or agent will provide participating lenders with sufficient information on an ongoing basis to monitor compliance with flood insurance requirements. A written representation provided by the lead lender or syndication agent certifying that the borrower has obtained appropriate flood insurance would be sufficient. Alternatively, the lead lender or syndication agent could provide participants and syndication lenders with a copy of the declaration page or other proof of insurance. The Agencies have incorporated minor revisions to the question and answer to clarify this guidance.

Proposed question and answer 4 (final question and answer 5) addressed the applicability of the Regulation to loans being restructured because of the borrower's default on the original loan. In light of the many loan modifications being made, the Agencies have revised the question to address loan modifications as well as loans being restructured because of the borrower's default on the original loan. The guidance provided in the answer is applicable to either situation. The Agencies received one comment asking whether capitalization of a loan in the event of a default would constitute an increase in the loan, triggering the requirements of the Regulation. If the capitalization results in an increase in the outstanding principal balance of the loan, then the requirements of the Regulation will apply. Conversely, a loan restructure that does not result in an increase in the amount to the loan (or an extension of the term of the loan) will not trigger the requirements of the Regulation. The Agencies do not believe further elaboration addressing this comment is necessary. The Agencies adopt the question and answer as proposed with the changes made to include loan modifications, as well as restructuring of loans.

Proposed question and answer 5 (final question and answer 6), addressed whether table funded loans are treated as new loan originations. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Proposed question and answer 6 (final question and answer 7) explained that a lender is not required to perform a review of its existing loan portfolio for purposes of the Act or Regulation; however, sound risk management practices may lead a lender to conduct periodic reviews. The Agencies received several comments opposing the reference to safety and soundness necessitating a due diligence review of a lender's portfolio. Although lenders are not required to review existing loan portfolios for flood insurance compliance under the Act or Regulation, the Agencies believe safety and soundness considerations may sometimes necessitate such due diligence and therefore adopt the question and answer as proposed.

Section II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation

The Agencies proposed this section to provide guidance on how lenders should determine the appropriate amount of flood insurance to require the borrower to purchase. The Agencies received numerous comments on this proposed section. As a result of these comments, the Agencies have made both significant revisions to proposed questions and answers as well as proposed new questions and answers submitted for comment to provide greater clarity on this important area. The proposed new questions and answers are addressed in the **SUPPLEMENTARY INFORMATION** immediately following the Redesignation Table.

Proposed question and answer 7 (final question and answer 8) addressed what is meant by the ''maximum limit of coverage available for the particular type of property under the Act.'' The first part of the question and answer discussed the maximum caps on insurance available under the Act. The Agencies did not receive any substantive comments on this part of the question and answer and adopt it as proposed in final question and answer 8. The second part of the question and answer discussed the maximum limits on the coverage in the context of the regulation that provides that ''flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located,'' commonly referred to as insurable value. In response to the numerous comments received on the insurable value part of the proposed question and answer, the Agencies are proposing new questions and answers 9 and 10 for public comment. The Agencies otherwise adopt question and answer 7 (final question and answer 8) as proposed.

Proposed questions and answers 8 and 9 (final questions and answers 11 and 12 respectively) more fully defined the terms ''residential building'' and ''nonresidential building.'' One commenter suggested that the Agencies define residential and nonresidential buildings based on the percentage of the building used in a certain way to account for mixed use buildings.

Proposed question and answer 8 (final question and answer 11) provides that a residential building may have incidental nonresidential use as long as such incidental use is limited to less than 25 percent of the square footage of the building. A mixed use residential building where greater than 25 percent of the square footage of the building is devoted to incidental nonresidential use will be considered a nonresidential building. Proposed question and answer 9 (final question and answer 12) provides that a mixed use nonresidential building with less than 75 percent of the square footage of the building used for residential purposes will still be considered nonresidential. The commenter also asked whether a farm house is residential or nonresidential. If the farmhouse is used as a dwelling, then it will be considered residential.

Another commenter asked whether a lender is obligated to determine the amount of nonresidential use in a residential building and whether there are any record maintenance requirements. Typically, whether a building is nonresidential or residential is of most importance in determining the maximum limits of a general property form NFIP policy. A residential building covered under a general property form will have a maximum coverage limit of $250,000, while a nonresidential building covered under the same type of policy will have a maximum coverage limit of $500,000. Therefore, the lender needs to know whether the building is considered residential or nonresidential when it determines the amount of flood insurance coverage to require. Finally, a commenter asked whether a designated loan, secured by a residential building and a detached nonresidential building, such as a garage, would require separate nonresidential coverage on the detached nonresidential building. If the residential building is a one-to-four family dwelling that is covered by a dwelling form NFIP policy, that policy will cover a detached garage at the same location as the dwelling, up to 10 percent of the limit of liability on the dwelling, so long as the detached garage is not used or held for use as a residence, a business or for farming purposes. In other cases, the lender must require the borrower to obtain coverage for each building securing the loan. The Agencies believe no further clarification is necessary and adopt the questions and answers as proposed.

Proposed question and answer 10 (final question and answer 13) illustrated how to apply the ''maximum limit of coverage available for the particular type of building under the Act.'' The majority of the comments received are addressed in the discussion below pertaining to new proposed questions and answers 9 and 10. The Agencies adopt question and answer 10 (final question and answer 13) as proposed.

Proposed questions and answers 11 and 12 (final questions and answers 14 and 15 respectively) were originally adopted in the 1997 Interagency Questions and Answers. The changes proposed by the Agencies in March 2008 were designed to provide greater clarity with no intended change in substance and meaning.

Four commenters addressed proposed question and answer 11, which dealt with flood insurance requirements where a designated loan is secured by more than one building. One commenter supported the proposed question and answer, but suggested that where the collateral is worthless and would not be replaced, lenders should not have to require the borrower to obtain flood insurance. The Agencies are proposing questions 9 and 10 for public comment to address the issue of determining insurable value for certain nonresidential buildings that include certain low-value nonresidential buildings. Another commenter asked whether a lender would be liable if the lender allocates the overall required flood insurance over several buildings and one building suffers flood damage and is underinsured. In such a circumstance, the lender would have complied with the Act and the Regulation. Of course, the lender has the option to require the borrower to obtain more flood insurance coverage than the minimum amount required if the lender believes there is a high risk of flood loss (*see* final question and answer 16). Two commenters suggested that the Agencies should explain how the lender should allocate the required amount of coverage for multiple buildings of different values that secure a single loan. One of these commenters suggested that allocation could be made by a square footage method. The Agencies agree that this is one reasonable method that could be used. Other methods may include a value-based method, splitting the total coverage pro rata based on replacement cost value, or a functionality method, requiring a higher proportional share of coverage to those buildings that are most important to the ongoing operation of the borrower. The apportionment of the required coverage in any particular situation should reflect consideration by both the lender and borrower of their needs and risks. The Agencies believe no further clarification is necessary but revised the answer to address the technical issue that single-family dwellings are considered residential if less than 50 percent of the square footage is used for an incidental nonresidential purpose.

Twenty commenters addressed proposed question and answer 12, which addressed the flood insurance requirements where the insurable value of a building securing a designated loan is less than the outstanding principal balance of the loan. The comments generally raised concerns about the lack of a definition of ''insurable value,'' discussed above in connection with proposed question and answer 7. As previously mentioned, the Agencies are proposing new questions and answers 9 and 10 for public comment to address the issue of insurable value. One commenter also asked whether the Agencies will require a lender to review flood insurance policies annually at renewal and increase coverage as the replacement cost value increases. The Agencies typically will not require such a review. However, if at any time during the term of the loan, the lender determines that flood insurance coverage is insufficient, the lender must comply with the force placement procedures in the Regulation. The Agencies believe no further clarification is necessary and adopt the question and answer as proposed.

Proposed question and answer 13 (final question and answer 16) clarified that a lender can require more flood insurance than the minimum required by the Regulation. The Regulation requires a minimum amount of flood insurance; however, lenders may require more coverage, if appropriate. Two commenters asked the Agencies to specify that lenders may never require coverage that exceeds the insurable value of a building. As stated in the question and answer, lenders should avoid creating situations where a building is over-insured. Further, the Agencies state in final question and answer 8 that ''an NFIP policy will not cover an amount exceeding the insurable value of the structure.'' Another commenter asked what penalties, if any, would be imposed on a lender that requires over insurance. The Agencies note that there are no penalties for over insurance under the Act and Regulation. However, there may be penalties for over-insurance under applicable State law. Finally, a commenter suggested that flood insurance should not be required where the collateral building is worthless and would not be replaced. The Agencies are proposing questions 9 and 10 for public comment to address the issue of

determining insurable value for certain nonresidential buildings that include certain low value nonresidential buildings. Other than a nonsubstantive revision to provide additional clarity, the Agencies adopt the question and answer as proposed.

Proposed question and answer 14 (final question and answer 17) addressed lender considerations regarding the amount of the deductible on a flood insurance policy purchased by a borrower. Generally, the proposed guidance advised a lender to determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender. The Agencies received nine comments addressing proposed question and answer 14. Four commenters suggested that borrowers with low-value buildings should be able to choose a deductible that exceeds the value of the building with a result that flood insurance would not be required. The Act and Regulation require flood insurance on all buildings at the lesser of the outstanding principal balance of the loan or the maximum amount available under the Act. A high deductible does not provide a de facto waiver of this requirement. One commenter suggested that the Agencies' position regarding not allowing a de facto waiver of the flood insurance requirement on low-value buildings based on the deductible amount contradicts the NFIP's policy of following the standard practice in the financial industry of allowing lenders to dictate the amount of the deductible according to the authority found in the loan agreement. Other commenters stated that a lender should not be required to determine deductibles on a case-by-case basis but rather through adoption of credit guidelines that apply across-the-board to all loans. In general, the Agencies agree that lenders may adopt credit guidelines that apply to most loans. However, such guidelines cannot work to waive the flood insurance requirements of the Act and Regulation. Finally, one commenter suggested that the Agencies should mention that the GSEs may have maximum allowable deductibles. The Agencies decline to revise the question and answer based on this comment because information about GSE requirements is outside the scope of this guidance. The Agencies adopt the question and answer as proposed.

Section III. Exemptions From the Mandatory Flood Insurance Requirements

This section contains only one question and answer, which describes the statutory exemptions from the mandatory flood insurance requirements. Proposed question and answer 15 (final question and answer 18) was revised from the 1997 Interagency Questions and Answers to provide greater clarity, with no intended change in substance or meaning. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Section IV. Flood Insurance Requirements for Construction Loans

The Agencies proposed this new section to clarify the requirements regarding the mandatory purchase of flood insurance for construction loans to erect buildings that will be located in an SFHA in light of concerns raised by some regulated lenders regarding borrowers' difficulties in obtaining flood insurance for construction loans at the time of loan origination. The Agencies received a number of comments on the proposed questions and answers concerning construction loans. Several commenters asked for guidance in determining the appropriate amount of flood insurance for a loan secured by a building during the course of construction. This guidance is provided in the discussion of the proposed new questions and answers 9 and 10 for public comment that addresses insurable value.

Proposed question and answer 16 (final question and answer 19) revises existing guidance to limit its scope and explained that a loan secured only by land located in an SFHA is not a designated loan that would require flood insurance coverage. The Agencies received one comment addressing this question and answer from a financial institution commenter that asked whether a loan secured by developed land without a structure on it, which, during the course of the loan, will not have any structure on it, necessitates a flood determination as it is considered residential real estate. The Agencies believe that the commenter has raised a valid point and have revised the proposed question and answer by removing the reference to ''raw'' land. The revised question and answer discusses loans secured only by ''land.'' Since a designated loan is a loan secured by a building or mobile home that is located or to be located in an SFHA, any loan secured only by land that is located in an SFHA is not a designated loan since it is not secured by a building or mobile home. In the case of this particular comment, the loan is not secured by either a building or mobile home; therefore, it is not a designated loan. The Agencies adopt the question and answer as proposed with the modification described above.

Proposed question and answer 17 (final question and answer 20) addressed whether a loan secured or to be secured by a building in the course of construction that is located or to be located in an SFHA in which flood insurance is available under the Act is a designated loan. The proposed answer provided that a lender must make a flood determination prior to loan origination for a construction loan. If the flood determination shows that the building securing the loan will be located in an SFHA, the lender must provide notice to the borrower, and must comply with the mandatory purchase requirements.

One financial institution commenter asked whether the lender/servicer must provide continuing flood insurance coverage where a structure in an SFHA covered by flood insurance is considered a total loss/demolished and only the land remains and the structure is to be rebuilt. The Agencies believe that if there is remaining insurable value in the building, flood insurance should continue to be maintained. If the building has no remaining insurable value, then flood insurance is not required. Under these circumstances, the total loss situation is akin to a loan secured only by land located in an SFHA, which is addressed in final question and answer 19 discussed above, and is not a designated loan that would require flood insurance coverage. If the building is a total loss/demolished and has no remaining insurable value, but a new structure is going to be built in its place, it should be treated like a new construction loan as discussed below in proposed question and answer 19 (final question and answer 22). To the extent that any new structure that will be built is, or will be, located in an SFHA, then the lender must provide notice to the borrower, and must comply with the mandatory purchase requirements as outlined in proposed questions and answers 18 and 19 (final questions and answers 21 and 22). The lender can, of course, elect to maintain the flood insurance that had previously been in place on the prior demolished structure to avoid having to monitor the reconstruction as discussed below.

Another financial institution commenter asked whether a building in the course of construction that will be a condominium building when finished can be insured under a Residential Building Condominium Association Policy (RCBAP) during the construction period. The RCBAP can be sold to a condominium association only. Therefore, unless the building is under

the condominium form of ownership with a condominium association formed at the time of construction, no RCBAP can be written. If there is no condominium association, the lender should require the builder/developer to obtain flood insurance under the NFIP General Property form or private equivalent. If the building will be a residential condominium, then the lender must require flood insurance to meet the statutory requirements, up to the $250,000 flood insurance limit under the NFIP for an ''other residential'' building.

Finally, a loan servicer commenter asked the Agencies to clarify when flood insurance coverage takes effect when a lender opts to require flood insurance at origination of a construction loan. This comment is addressed in final question and answer 21. The Agencies adopt the final question and answer 20 as proposed.

Proposed question and answer 18 (final question and answer 21) explained that, generally, a building in the course of construction is eligible for coverage under an NFIP policy, and that coverage may be purchased prior to the start of construction. One financial institution commenter asked whether the definition of a ''building'' in the proposed question and answer has the same meaning as FEMA's definition in its *Mandatory Purchase of Flood Insurance Guidelines.*[2] The Agencies believe that the definitions of ''building,'' as well as the definition of ''building in the course of construction,'' used by FEMA are fully consistent with the definition in the Regulation. The Agencies adopt the question and answer as proposed with only minor clarifications to the citation of FEMA's *Flood Insurance Manual.*

Proposed question and answer 19 (final question and answer 22), addressed when flood insurance must be purchased for buildings under the course of construction. The answer provided lenders with flexibility regarding the timing of the mandatory purchase requirement for construction loans in response to concerns raised by lenders that borrowers have encountered difficulties in obtaining flood insurance for construction loans at the time of origination. Specifically, the Agencies proposed to permit lenders to allow borrowers to defer the purchase of flood insurance until a foundation slab has been poured and/or an elevation certificate has been issued. Lenders choosing this option, however, must require the borrower to have flood insurance in place before funds are disbursed to pay for building construction on the property securing the loan (except as necessary to pour the slab or perform preliminary site work). A lender who elects this approach and does not require flood insurance at loan origination must have adequate internal controls in place to ensure compliance. Moreover, lenders must still ensure that the required flood determination is completed at origination and that notice is given to borrowers if the property is located in an SFHA.

A financial institution and a financial institution membership organization commented that requiring lenders to have monitoring procedures in place to ensure that the borrower obtains flood insurance as soon as the foundation is complete or the elevation certificate issued is too burdensome. The Agencies note that if a lender determines that this option is too burdensome they may continue the practice of requiring flood insurance at origination. The monitoring procedures are only necessary in the event that lenders choose to require flood insurance at the time the foundation pad is completed and/or the elevation certificate is obtained. Therefore, the Agencies believe that no revision to the proposed question and answer is necessary.

Several commenters, including four financial institutions and a law firm that advises financial institutions, asked the Agencies for clarification regarding the ''timing'' options available for determining whether flood insurance is required for buildings in the course of construction, that is, the foundation alone and/or the issuance of an elevation certificate. Either the pouring of the foundation slab or the issuance of an elevation certificate provides sufficient information for a lender to determine whether the collateral building is located in an SFHA for which flood insurance is required. The Agencies believe that no further elaboration is necessary to address this issue in the question and answer.

Finally, one individual commenter indicated that it is unclear whether an NFIP policy can be purchased before two walls and a roof have been erected. FEMA guidance provides that buildings yet to be walled and roofed are generally eligible for coverage after an elevation certificate is obtained or a foundation slab is poured, except where either construction is halted for more than 90 days or if the lowest floor used for rating purposes is below Base Flood Elevation (BFE). If the lowest floor is under BFE, then the building must be walled and roofed before flood insurance coverage is available.[3] The Agencies believe that the commenter has raised a valid point and have clarified the proposed question and answer accordingly. The Agencies otherwise adopt the question and answer as proposed.

The Agencies also proposed new question and answer 20 (final question and answer 23) to clarify whether the 30-day waiting period for an NFIP policy applies when the purchase of flood insurance is deferred in connection with a construction loan since there has been confusion among lenders on this issue in the past. Per guidance from FEMA, the answer provided that the 30-day waiting period would not apply in such cases.[4] The NFIP would rely on the insurance agent's representation that the exception applies unless a loss has occurred during the first 30 days of the policy period. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Section V. Flood Insurance Requirements for Nonresidential Buildings

The Agencies proposed this new section to address the flood insurance requirements for agricultural buildings that are taken as security for a loan, but that have limited utility to a farming operation, and loans secured by multiple buildings where some are located in an SFHA and others are not. Six commenters suggested that this section should be broadened to include all nonresidential buildings, including multiple nonresidential buildings over a large geographic area, not just those related to agriculture. The Agencies concur and have changed the title to section V to read ''Flood Insurance Requirements for Nonresidential Buildings'' and modified proposed questions and answers 21 and 22 (final question and answers 24 and 25) accordingly. Several commenters asked for guidance in determining the appropriate amount of flood insurance for loans secured by a nonresidential building, particularly for nonresidential buildings of low to no value. The Agencies are proposing questions 9 and 10 for public comment to address the issue of determining insurable value for certain nonresidential buildings that include certain low value nonresidential buildings.

[2] FEMA, Mandatory Purchase of Flood Insurance Guidelines (September 2007) at GLS—1–2. FEMA has made this booklet available electronically at *http://www.fema.gov/library/viewRecord.do?id=2954.* Hard copies are available by calling FEMA's Publication Warehouse at (800) 480–2520.

[3] FEMA, Mandatory Purchase of Flood Insurance Guidelines, at 30–31.

[4] FEMA, Mandatory Purchase of Flood Insurance Guidelines, at 30.

Proposed question and answer 21 (final question and answer 24) explained that all buildings taken as security for a loan and located in an SFHA require flood insurance. The question and answer also explained that lenders may consider ''carving out'' a building from the security for a loan; however, it may be inappropriate for credit risk management reasons to do so. One commenter questioned whether lenders need to require flood insurance when the collateral is only a building (in the commenter's case, a grain bin) and not the real property where the building is located. Further, the commenter stated that they only use a UCC fixture filing to secure the building. Flood insurance is required for any building taken as collateral when that building is located in an SFHA in a participating community. This requirement is not predicated on whether the underlying real estate is also included in the loan collateral or the method used by the lender to secure its collateral. FEMA answered the question of whether a grain bin is a building by specifically including a grain bin in its definition of a nonresidential building, therefore flood insurance is required.[5]

A commenter stated that if the value of a building is worthless or nearly zero then flood insurance should not be required. The Act requires all buildings located in an SFHA and in a participating community to have flood insurance with only two exemptions—when a building is State-owned and covered by self-insurance satisfactory to the Director of FEMA; and when the original loan balance is $5,000 or less and the original repayment term is one year or less. All other buildings are required to be covered by flood insurance. The Agencies are proposing questions 9 and 10 for public comment to address the issue of determining insurable value for certain nonresidential buildings that include certain low value nonresidential buildings.

Another commenter suggested that in determining ''insurable value,'' institutions should be permitted to place good faith reliance on insurance agents who are better equipped to make these determinations. Federally regulated lenders may solicit assistance when evaluating insurable value and this assistance could include an insurance professional. However, it is ultimately the lender's responsibility to determine the insurable value of a building and, as such, it must concur with the determination. The same commenter also asked the Agencies to explain the rationale for treating hazard insurance and flood insurance differently. The reason for treating flood insurance and hazard insurance differently is that flood insurance includes coverage for the repair or replacement cost of the foundation and supporting structures whereas hazard insurance typically does not include coverage of the foundation. Therefore, the calculation of insurable value for flood insurance includes these repair or replacement costs while the calculation of insurable value for hazard insurance does not.

Lastly, a commenter suggested that the Agencies include additional questions and answers about other problems that arise between lenders and insurance companies, such as insurance companies requiring higher amounts of coverage than the appraised value of a structure of minimal value. The amount of flood insurance required by the Act is the lesser of the outstanding principal balance of the loan, the maximum allowed under the Act, or the insurable value. The appraised market value of the structure is not a factor in determining the amount of required insurance. The Agencies adopt question and answer 21 with the changes made to include all nonresidential buildings and not just agricultural buildings.

Proposed question and answer 22 (final question and answer 25) addressed the flood insurance requirements for multiple agricultural buildings located throughout a large geographic area, some in an SFHA and some not. One commenter suggested that the Agencies modify the first sentence in the proposed answer to refer to ''improved property'' rather than ''property.'' The Agencies concur with this recommendation and have inserted ''improved real estate'' in the place of the term ''property'' throughout the answer. The term ''improved real estate,'' instead of the suggested ''improved property,'' was added because it is the term used in the Act.

A commenter asked the Agencies to address the situation where an insurance company requires flood insurance on all buildings on the property, not just those inside an SFHA and another commenter asked the Agencies to mention that a lender can require flood insurance on buildings not located in an SFHA. The Act does not prohibit a lender from requiring more flood insurance than the minimum required by the Act; a lender may have legitimate business reasons for requiring more flood insurance than that required by the Act and neither the Act nor the Regulation prohibits this additional flood insurance. Finally, a commenter suggested that the Agencies modify the second to last sentence in the answer to refer to ''improved property securing the loan'' rather than ''designated loan.'' The Agencies have deleted this sentence entirely as it is not needed to answer the question. The Agencies adopt the question and answer with the modifications discussed above.

Section VI. Flood Insurance Requirements for Residential Condominiums

The Agencies proposed this new section to address flood insurance requirements for residential condominiums. The proposed section contained two previously existing questions and answers, which were modified and expanded, and five new questions and answers. The Agencies received numerous comments addressing this section.

A number of commenters addressed the 2007 FEMA requirement that insurance companies providing a Residential Building Association Policy (RCBAP) include the replacement cost value of the condominium building and the number of units in the building on the declaration page.[6] Two commenters suggested that the Agencies should enforce this requirement over all insurance companies. The Agencies strongly support this FEMA requirement; however, the Agencies may only enforce the requirement against those entities over which the Agencies have jurisdiction.

Proposed question and answer 23 (final question and answer 26) explained that residential condominiums were subject to the statutory and regulatory requirements for flood insurance. The Agencies received only one comment addressing this question and answer, which was in agreement with the guidance. The Agencies adopt the question and answer as proposed.

One commenter suggested that an RCBAP should be described in a separate question and answer in this section. Although the RCBAP was described within the proposed questions and answers, the Agencies have compiled the information from proposed questions and answers 24 and 25 into new question and answer 27 to specifically describe an RCBAP, and renumbered the remaining questions and answers accordingly.

Proposed question and answer 24 (final question and answer 28)

[5] FEMA, Flood Insurance Manual, GR 2.

[6] FEMA Memorandum for Write Your Own (WYO) Principal Coordinators and NFIP Servicing Agent (Apr. 18, 2004) (subject: Oct. 1, 2007 Program changes).

discussed the amount of flood insurance that a lender must require with respect to residential condominium units to comply with the mandatory purchase requirements under the Act and the Regulation. The Agencies received a number of comments addressing various aspects of this question and answer.

Several commenters suggested that lenders should be able to rely on the replacement cost value and number of units provided on the declaration page of the RCBAP in determining the insurable value of a condominium unit. The Agencies generally agree that a lender may rely on the replacement cost value and number of units provided on the declaration page unless it has reason to believe that such amounts conflict with other available information. If there is a conflict, the lender should notify the borrower of the facts that cause the lender to believe there is a conflict. If the lender believes that the borrower is underinsured, it should require the purchase of a Dwelling Policy for supplemental coverage. The Agencies have modified the question and answer accordingly.

Several commenters asked about other types of valuation information that may be appropriate to use in determining the insurable value of a condominium unit when the insurance provider does not include the replacement cost value and number of units on the RCBAP's declaration page. While the Agencies believe that the question and answer does not require further elaboration on this point, the Agencies note that consistent with safe and sound lending practices, lenders should maintain information about the value of their collateral. Even if the insurance provider does not include the replacement cost value of the condominium building and the total number of units on the declaration page, lenders typically have other sources of valuation information, including cost-approach appraisals, automated valuation systems, and tax assessments. Further, many lenders' policies and procedures include obtaining specific documentation related to condominium collateral that may provide information about the condominium's insurable value, including copies of condominium master insurance policies or the declaration pages of such policies. The Agencies generally will not criticize a lender that, in good faith, has used a reasonable method to determine the insurable value.

Several commenters agreed that RCBAP coverage written at replacement cost value, assuming that value is less than the outstanding principal amount of the loan or the maximum available under the Act, is the appropriate insurable value for a condominium building and that an RCBAP with that coverage would meet the mandatory purchase requirement for an individual unit borrower. The 1997 Interagency Questions and Answers stated that RCBAP coverage of 80 percent of replacement cost value was sufficient to meet the mandatory purchase requirement. Because of this change in policy, commenters urged the Agencies to ensure that the new guidance will apply only prospectively. Consistent with the stated intention in the March 2008 Proposed Interagency Questions and Answers, the Agencies intend that this guidance will apply to any loan that is made, increased, extended, or renewed on or *after* the effective date of these Interagency Questions and Answers.

The Agencies had previously indicated in the **SUPPLEMENTARY INFORMATION** to the March 2008 Proposed Interagency Questions and Answers that the new guidance would apply to a loan made prior to the effective date of this guidance, but only as of the first flood insurance policy renewal following the effective date of the guidance. Three commenters asked the Agencies to reconsider this position. The commenters asserted that lenders making loans secured by individual condominium units generally do not receive RCBAP renewal notifications from the insurance providers; therefore, the lender may not be in a position to make a determination at the first RCBAP renewal period following the effective date of this guidance.

Lenders are required to ensure that designated loans are covered by flood insurance for their term. However, the Agencies recognize that lenders made loans and required coverage amounts in reliance on the previous guidance. Therefore, the Agencies have agreed that the revised guidance will not apply to any loan made prior to the effective date of this guidance unless a trigger event occurs in connection with the loan (that is, the loan is refinanced, extended, increased, or renewed). Because the Agencies provided supervisory guidance that stated that an RCBAP with coverage at 80 percent of replacement cost value was sufficient, any loan for a condominium unit relying on an RCBAP with coverage that complied with that guidance was in compliance at the time it was made. Absent a new trigger event, the Agencies, therefore, will not require lenders to ensure that RCBAP coverage is increased to 100 percent on previously compliant loans made prior to the effective date of this new guidance. The Agencies have revised the proposed question and answer accordingly. The Agencies anticipate that the universe of loans affected by this policy will be relatively small and diminishing due to refinancing and other loan prepayments that typically occur in the first five years of a home mortgage.

Proposed question and answer 25 (final question and answer 29) addressed what a lender that makes a loan on an individual condominium unit must do if there is no RCBAP coverage. Three commenters addressed this question and answer. One commenter suggested that, in the example, the Agencies should clarify that the amount of insurance required is the ''minimum amount'' because that value ($175,000) is based on the principal amount of the loan, which is less than either the insurable value of the unit ($200,000) or the maximum amount available in a dwelling policy ($250,000). In response to this comment, the Agencies have added the qualifier ''at least'' before the amount of $175,000 to clarify that $175,000 is the minimum amount of insurance that must be required. As in other situations, a lender may require additional coverage.

Another commenter asked whether a unit owner's dwelling policy will respond at all if there is no RCBAP on the condominium building. Although this is a general insurance question that is outside the Agencies' purview, FEMA guidance provides that, when there is no RCBAP coverage on the condominium building, the unit owner's dwelling policy will respond to losses to improvements owned by the insured and to assessments charged by the condominium association, up to the building coverage limits of the dwelling policy purchased.[7] Finally, one other commenter suggested that, when a condominium association refuses to purchase an RCBAP, the lender should refuse to make a loan to a unit owner because the unit owner's dwelling policy is not adequate to protect the lender. The Agencies agree that there is risk to the lender in accepting a dwelling policy as protection for the collateral. However, this is a risk that the lender must weigh. Such policy, however, does fulfill the mandatory purchase requirement. The Agencies have amended the proposed question and answer to include additional discussion on dwelling policies in response to these comments. The

[7] *See* FEMA, Mandatory Purchase of Flood Insurance Guidelines at 48–49; FEMA Flood Insurance Manual at p. POL 8 (FEMA's Flood Insurance Manual is updated every six months).

Agencies otherwise adopt the question and answer as proposed.

Proposed question and answer 26 (final question and answer 30) discussed what a lender must do if the condominium association's RCBAP coverage is insufficient to meet the mandatory purchase requirements for a loan secured by an individual residential condominium unit. Several commenters suggested changes to FEMA's flood insurance policies. It is beyond the Agencies' jurisdiction to address these suggestions, which are within the purview of FEMA. Interested parties should appropriately consult with FEMA concerning the actual operation of flood insurance policies.

Several other commenters noted that the purchase of a unit owner's dwelling policy may not provide adequate coverage to the unit owner or the lender as a supplement to an RCBAP providing insufficient coverage to meet the mandatory purchase requirement. As noted in the proposed question and answer, a dwelling policy may contain claim limitations; therefore, it is incumbent upon a lender to understand these limitations.

Several commenters also suggested that the Agencies should not put forth guidance encouraging lenders to apprise borrowers that there is risk involved when flood coverage is maintained under a unit owner dwelling policy along with an RCBAP that does not provide replacement cost coverage. The Agencies believe that although insurance professionals are in the best position to adequately explain the implications of such coverage, lenders should still be encouraged to alert their borrowers to the risk. FEMA's brochure, *National Flood Insurance Program: Condominium Coverage*, may provide some helpful information for borrowers. The Agencies adopt the question and answer as proposed.

Proposed question and answer 27 (final question and answer 31) discussed what a lender must do when it determines that a loan secured by a residential condominium unit is in a complex with a lapsed RCBAP. One commenter requested that the Agencies provide more guidance on the steps a lender should take to determine if there is a lapse in existing RCBAP coverage. As mentioned above, the Agencies are aware that, generally, a lender that is the mortgagee of a unit owner's loan would not receive notice that the condominium association's RCBAP has expired. However, if a trigger event occurs (that is, the lender makes, increases, extends, or renews a loan to the borrower secured by the unit) or if the lender otherwise makes a determination that the RCBAP has expired, then the lender will be required to follow the procedure outlined in final question and answer 28 and discussed above. The Agencies adopt the question and answer as proposed.

Proposed question and answer 28 (final question and answer 32) provided examples of how the co-insurance penalty applies when an RCBAP is purchased at less than 80 percent of replacement cost value, unless the amount of coverage meets the maximum coverage of $250,000 per unit. Two commenters asked about the purpose of this question and answer. The Agencies intended this question and answer to provide information on the topic to lenders. The Agencies adopt the question and answer as proposed.

Proposed question and answer 29 (final question and answer 33) addressed the major factors that are involved with coverage limitations of the individual unit owner's dwelling policy with respect to the condominium association's RCBAP coverage. One commenter asked the purpose of this question and answer and further asserted that lenders should not be required to explain to borrowers about the limitations in coverage. The Agencies intended this question and answer to be informative in nature and agree that insurance professionals are in a better position to explain policy limitations to their policyholders. The Agencies adopt the question and answer as proposed.

Section VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA

Proposed Section VII addressed flood insurance requirements for home equity loans, lines of credit, subordinate liens, and other security interests in collateral located in an SFHA. The proposed questions and answers primarily proposed only minor wording changes or clarifications to questions and answers in the 1997 Interagency Questions and Answers without any change in the substance or meaning. Several commenters addressed questions and answers in this section.

Proposed question and answer 30 (final question and answer 34), addressed when a home equity loan is considered a designated loan that requires flood insurance. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Proposed question and answer 31 (final question and answer 35), addressed when a draw against an approved line of credit secured by property located in an SFHA requires flood insurance. Nine commenters questioned the statement that a designated loan requires a flood determination when application is made for that loan. The commenters noted that under the Act and Regulation, a lender or its servicer is responsible for performing a flood determination upon the making, increase, extension, or renewal of a loan, and not when a loan application is submitted. They further noted that applications are often withdrawn and that lenders usually have a flood determination performed when they are reasonably certain that one of the previously listed ''trigger'' events (*e.g.*, the making or increasing) will occur. The commenters requested that this point be clarified. The Agencies agree with the commenters and are deleting the statement that a designated loan requires a flood determination when application is made for that loan. The Agencies otherwise adopt the question and answer as proposed.

Proposed question and answer 32 (final question and answer 36) addressed how much flood insurance is required when a lender makes a second mortgage secured by property located in an SFHA. Six commenters argued that a junior lienholder should not have to take senior liens into account when determining the required amount of flood insurance coverage. They asserted that the current requirement causes substantial cost and delay, resulting in an undue burden due to the need for either the junior lienholder or its servicer to engage in an expensive, time-consuming search for prior liens. One commenter contended that the question and answer should state that the amount of coverage for a junior lien would be 100 percent of the insurable value of the property. Alternatively, the same commenter suggested multiple flood insurance policies on buildings with multiple liens as a means to address the problem. On the other hand, one commenter believed that the question and answer should remind lenders to add secondary loans to any existing flood insurance policy's mortgagee clause. Three commenters requested more guidance on how and when a lienholder should determine the value of any other liens on improved collateral property. One of these mentioned closing or upon renewal of a loan as two possible dates for such activity.

The Agencies believe that, given the provisions of an NFIP policy, a lender cannot comply with Federal flood insurance requirements when it makes,

increases, extends, or renews a loan by requiring the borrower to obtain NFIP flood insurance solely in the amount of the outstanding principal balance of the lender's junior lien without regard to the flood insurance coverage on any liens senior to that of the lender. As illustrated in the examples in the question and answer, a junior lienholder's failure to take such a step can leave that lienholder partially or even fully unprotected by the borrower's NFIP policy in the event of a flood loss.

The final question and answer provides that a junior lienholder should work with the borrower, senior lienholder, or both these parties, to determine how much flood insurance is needed to adequately cover the improved real estate collateral to the lesser of the total of the outstanding principal balances on the junior loan and any senior loans, the maximum available under the Act, or the insurable value of the structure. The junior lienholder should also ensure that the borrower adds the junior lienholder's name as mortgagee/loss payee to an existing flood insurance policy.

The final question and answer also provides that a junior lienholder should obtain the borrower's consent in the loan agreement or otherwise for the junior lienholder to obtain information on balance and existing flood insurance coverage on senior lien loans from the senior lienholder. Commenters also contended that privacy concerns make it difficult for junior lienholders to obtain information from servicers or lenders about loan balances and existing flood insurance coverage. However, the Agencies have determined that the privacy provisions of the Gramm-Leach-Bliley Act, as implemented in the Agencies' regulations, do not prohibit sharing of the loan and flood insurance information between two lenders with liens on the same property, even without the borrower's consent.

One commenter noted that it is sometimes difficult to obtain information about the outstanding principal balance of other liens once a loan has been closed, such as at loan renewal, and asked what steps might be taken in that regard. The final question and answer states that junior lienholders have the option of obtaining a borrower's credit report to establish the outstanding balances of senior liens on property to aid in determining how much flood insurance is necessary upon increasing, extending or renewing a junior lien.

In the limited situation where a junior lienholder or its servicer is unable to obtain the necessary information about the amount of flood insurance in place on the outstanding balance of a senior lien (for example, in the context of a loan renewal), the final question and answer provides that the junior lienholder may presume that the amount of insurance coverage relating to the senior lien in place at the time the junior lien was first established (provided that the amount of flood insurance coverage relating to the senior lien was adequate at the time) continues to be sufficient.

The Agencies have revised the proposed question and answer to respond to these comments. The question and answer also provides examples illustrating the application of these methods of dealing with adequate flood insurance coverage for junior and senior liens. Specifically, the examples illustrate how a junior lienholder should handle situations such as: when a senior lienholder has obtained an inadequate amount of flood insurance coverage, when a senior lienholder is not subject to the Act's and Regulation's requirements; and when insurance coverage in the amount of the improved real estate's insurable value must be obtained by the junior lienholder.

Commenters also raised other issues related to ongoing flood insurance coverage on existing second lien loans in the context of force placement. The final question and answer addresses the triggering events of making, increasing, extending, and renewing a second lien loan.

Proposed question and answer 33 (final question and answer 37) addressed flood insurance requirements in connection with home equity loans secured by junior liens. Ten commenters requested that the question and answer be clarified to address other subordinate lien loans, not just junior lien home equity loans. The Agencies agree with the commenters and, therefore, have revised the question and answer to clarify that it applies to all subordinate lien loans.

Another commenter recommended that the ''same lender'' exception also apply to a lender's affiliates. The Act provides that a person who increases, extends, renews, or purchases a loan secured by improved real estate or a mobile home may rely on a previous determination of whether the building or mobile home is located in an area having special flood hazards, if the previous determination was made no more than seven years before the date of the transaction and there have been no subsequent map revisions. 42 U.S.C. 4104b(e). The Act further defines the term ''person'' to include any individual or group of individuals, corporation, partnership, association, or any other organized group of persons, including State and local governments and agencies thereof. 42 U.S.C. 4121(a)(5). The Agencies do not interpret the definition as providing for the inclusion of affiliates within a corporate entity as constituting a single ''person'' except for treating a regulated lending institution and its operating subsidiaries as a single entity. The Agencies believe that no further revision of the question and answer is appropriate on this point. The Agencies adopt the question and answer as proposed subject to the revisions discussed above.

Proposed question and answer 34 (final question and answer 38) addressed the issue of whether a loan secured by inventory stored in a building located in an SFHA, when the building is not collateral for the loan, requires flood insurance. One commenter asked what sort of legal instrument would have to be filed by a lender to result in the need for flood insurance coverage for a borrower's contents. The Agencies decline to respond to this inquiry because it involves a business and legal decision beyond the interpretation of the Act and Regulation. The Agencies adopt the question and answer as proposed.

Proposed question and answer 35 (final question and answer 39) addressed flood insurance requirements when building contents are security for a loan. Seven commenters requested further guidance and clarification on how to calculate flood insurance contents coverage in compliance with Federal regulation. Five commenters specifically requested that the Agencies give examples to illustrate how flood insurance coverage works for building and contents. Two commenters asked whether a lender should consider the total amount of coverage for both contents and building together or should consider the two separately. One commenter asked whether a lender could do the same with contents and building coverage as is the practice with coverage for multiple buildings, that is, the contents and building will be considered to have a sufficient amount of flood insurance coverage for regulatory purposes as long as some amount of insurance is allocated to each category.

The Agencies agree that the practice for flood insurance coverage for multiple buildings would also be applicable to coverage for both contents and building. That is, both contents and building will be considered to have a sufficient amount of flood insurance coverage for regulatory purposes as long as some reasonable amount of insurance

is allocated to each category. The Agencies have added an example to this question and answer to illustrate this point. The Agencies otherwise adopt the question and answer as proposed.

Proposed question and answer 36 (final question and answer 40), addressed the flood insurance requirements applicable to collateral or contents that do not secure a loan. The Agencies did not receive any substantive comments and adopt it as proposed.

Proposed question and answer 37 (final question and answer 41) addressed the Regulation's application where a lender places a lien on property out of an ''abundance of caution.'' One commenter recommended that flood insurance coverage should not be required when an interest is taken by a lender in improved real estate in a flood hazard zone out of an ''abundance of caution.''

The Agencies decline to accept this recommendation. The Act provides that a lender may not make, increase, extend, or renew any loan secured by improved real estate or a mobile home in a flood hazard area unless the building or mobile home is covered for the term of the loan by flood insurance. 40 U.S.C. 4012a(b)(1). The statute makes no exception for property taken as collateral by a lender out of an abundance of caution. The Agencies adopt the question and answer as proposed.

Proposed question and answer 38 (final question and answer 42) addressed loans secured by a note on a single-family dwelling, but not the dwelling itself. Proposed question and answer 39 (final question and answer 43) pertained to loans personally guaranteed by a third party who gave the lender a security interest in improved real estate owned by the guarantor. One commenter stated that the two proposed questions and answers conflicted. The Agencies do not believe there is a conflict between the two questions and answers. In the former question and answer, the Agencies concluded that Federal flood insurance requirements did not apply because the loan was not secured by improved real estate, but was instead secured by a note. In the latter question and answer, the lender was given a security interest in improved real estate by a third party in connection with the third party providing a personal guarantee on a loan. In each situation, the absence or presence of a security interest in improved real estate determined whether Federal flood insurance requirements would apply. The Agencies believe that no further elaboration is necessary and adopt these questions and answers as proposed.

Section VIII. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights

Proposed Section IX (final Section VIII) addressed flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights. This section and the accompanying questions and answers were originally adopted in the 1997 Interagency Questions and Answers, and any changes proposed by the Agencies in the March 2008 Proposal were designed to provide greater clarity with no intended change in substance and meaning. The comments received by the Agencies regarding the questions and answers in this section were generally supportive.

Proposed question and answer 41 (final question and answer 44) addressed the application of the flood insurance requirements under the Regulation to lenders/loan servicers under different scenarios. Upon consideration of the various comments, the Agencies have clarified the question and answer to apply to both regulated and nonregulated lenders. One commenter was supportive of the guidance, but recommended that lenders be allowed to assign a certain level of responsibility for flood insurance compliance through contractual arrangements to the servicer. The commenter asserted that this approach would not absolve lenders of liability and ultimate responsibility, but would make for a less burdensome and logical approach. The Agencies believe that the lender's responsibilities are sufficiently clear in the question and answer and that further elaboration on this point is unnecessary.

Another commenter asked that the Agencies expressly indicate that no servicing obligations need be followed by a lender who has sold both the loan and the servicing rights to a nonregulated party. The Agencies have elected to clarify in the answer that once the regulated lender has sold the loan and the servicing rights, the lender has no further obligation regarding flood insurance on the loan. The Agencies have also elected to clarify in the answer that, depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake sufficient due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance. Moreover, if the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Act and Regulation. The Agencies otherwise adopt the question and answer as proposed.

Proposed question and answer 42 (final question and answer 45), addressed when a lender is required to notify FEMA or the Director's designee. Proposed question and answer 43 (final question and answer 46), addressed whether a RESPA Notice of Transfer sent to the Director of FEMA satisfies the Act and Regulation. The Agencies received one comment that was supportive of these proposed questions and answers. The Agencies adopt the questions and answers as proposed.

Proposed question and answer 44 (final question and answer 47), indicated that delivery of the notice can be made electronically, including by batch transmission if acceptable to the Director or the Director's designee. The Agencies did not receive any substantive comments and adopt this question and answer as proposed.

Proposed question and answer 45 (final question and answer 48) indicated that if a loan and its servicing rights are sold by the lender, the lender is required to provide notice to the FEMA Director or the Director's designee. The Agencies received one comment that was supportive of the proposed question and answer. The Agencies adopt the question and answer as proposed.

Proposed question and answer 46 (final question and answer 49), indicated that a lender is not required to provide notice when the servicer, not the lender, sells or transfers the servicing rights to another servicer; rather the servicer is obligated to provide the notice. Proposed question and answer 47 (final question and answer 50) indicated that in the event one institution is acquired by or merges with another institution, the duty to provide the notice for loans being serviced by the acquired institution falls to the successor institution if notification is not provided by the acquired institution prior to the effective date of the acquisition or merger. The Agencies received one comment that was supportive of these proposed questions and answers. The Agencies adopt the questions and answers as proposed.

Section IX. Escrow Requirements

Proposed Section X (final Section IX) addressed escrow requirements for flood insurance premiums. This section and the accompanying questions and answers were originally adopted in the 1997 Interagency Questions and Answers, and any changes proposed by the Agencies were designed to provide

greater clarity with no intended change in substance and meaning. The Agencies received few comments on this section.

Proposed question and answer 48 (final question and answer 51), addressed when multifamily buildings and mixed-use properties are considered residential real estate. A financial institution commenter requested two clarifications. First, the commenter noted that the proposed answer indicated that lenders are required to escrow flood insurance premiums and fees for any mandatory flood insurance for designated loans if the lender requires the escrow of taxes, hazard insurance premiums, ''or other loan charges'' for loans secured by residential improved real estate. The commenter questioned whether lenders are required to escrow flood insurance premiums and fees for any mandatory flood insurance for designated loans if the lender requires the escrow of mortgage insurance premiums. The Agencies believe that escrowing flood insurance premiums and fees for mandatory flood insurance for designated loans is required by the Act and Regulation where the lender requires the escrowing of mortgage insurance premiums. The Act and Regulation require escrowing if a regulated lending institution requires the escrowing of ''taxes, insurance premiums, fees, or any other charges.'' Mortgage insurance is a form of insurance. It is also an ''other charge'' under the Regulation. To provide greater consistency with the Act and Regulation, the Agencies are inserting the word ''any'' into the answer so that it refers to taxes, insurance premiums, fees, ''or any other charges.''

The commenter also asked the Agencies to expressly state in the answer that a lender is not required to escrow flood insurance premiums if it chooses to make an exception on a loan-by-loan basis not to escrow other items such as taxes, hazard insurance premiums, or other loan charges. In response, the Agencies have added a sentence to the answer providing that a lender is not required to escrow flood insurance premiums and fees for a particular loan if it does not require escrowing of any other charges for that loan.

Finally, because the Agencies are adopting questions and answers providing examples of residential and nonresidential properties, the discussion of mixed-use properties has been revised to refer the reader to those questions and answers. If the primary use of a mixed-use property is for residential purposes, the Regulation's escrow requirements apply. The Agencies otherwise adopt the question and answer as proposed.

Proposed question and answer 49 (final question and answer 52) addressed when escrow accounts must be established for flood insurance purposes and indicated that escrow accounts should look to the definition of ''Federally related mortgage loan'' contained in the Real Estate Settlement Procedures Act (RESPA) to see whether a particular loan is subject to RESPA's escrow requirements. The Agencies did not receive any substantive comments on the proposed question and answer; however, the Agencies made nonsubstantive revisions to the answer to more directly respond to the question asked and to provide additional clarity.

The Agencies received no comments on proposed questions and answers 50 and 51 (final questions and answers 53 and 54 respectively). Proposed question and answer 50 (final question and answer 53) indicated that voluntary escrow accounts established at the request of the borrower do not trigger a requirement for the lender to escrow premiums for required flood insurance. Proposed question and answer 51 (final question and answer 54) indicated that premiums paid for credit life insurance, disability insurance, or similar insurance programs should not be viewed as escrow accounts requiring the escrowing of flood insurance premiums. The Agencies did not receive any substantive comments on these questions and answers and adopt them as proposed.

Proposed question and answer 52 (final question and answer 55) advised that only certain escrow-type accounts for commercial loans secured by multifamily residential buildings trigger the escrow requirement for flood insurance premiums. The Agencies did not receive any substantive comments and adopt this question and answer as proposed.

Proposed question and answer 53 (final question and answer 56) addressed escrow requirements for condominium units covered by RCBAPs. The Agencies received several comments on this question and answer. Two financial institution commenters reiterated their comments pertaining to proposed question and answer 24 (final question and answer 28) that lenders or servicers of a loan to a condominium unit owner do not receive a copy of the RCBAP renewal information because they are not loss payees on the policy. This comment was addressed in the **SUPPLEMENTARY INFORMATION** pertaining to Section VI above. A financial institution requested clarification that regardless of whether the lender makes a loan for the purchase or refinance of a condominium unit, an escrow account is not required if dues to the condominium association apply to the RCBAP premiums. The proposed question and answer only addressed purchase loans; however, the Agencies agree with the commenter that the same principle should apply to refinancings. The Agencies, therefore, are clarifying the question and answer to provide that when a lender makes, increases, renews, or extends a loan secured by condominium unit that is adequately covered by an RCBAP, and dues to the condominium association apply to the RCBAP premiums, an escrow account is not required. However, if the RCBAP coverage is inadequate and the unit is also covered by a dwelling form policy, premiums for the dwelling form policy would need to be escrowed. The Agencies otherwise adopt the question and answer as proposed.

X. Force Placement of Flood Insurance

Proposed Section XI (final Section X) addressed issues concerning the force placement of flood insurance. This section and the accompanying questions and answers were originally adopted in the 1997 Interagency Questions and Answers and any changes proposed by the Agencies in March 2008 were designed to provide greater clarity with no intended change in substance and meaning.

The Agencies received several comments on proposed question and answer 54 (final question and answer 57), which provided general guidance on the force placement requirement under the Act and Regulation. Six commenters requested further guidance regarding the exact point at which lenders must commence the force placement process. Similarly, commenters requested clarification as to precisely when the 45-day notice period begins after which a lender or its servicer must force place insurance. One of these commenters specifically asked the Agencies to clarify whether insurance is required 45 days from the date the institution received the cancellation notice, the date of cancellation on that notice, or the date that the borrower receives notice from the lender or servicer. One commenter requested clarification from the Agencies whether the 45-day notice could be sent prior to the actual date of expiration of flood insurance coverage.

As discussed in the proposed question and answer, the Act and Regulation require the lender, or its servicer, to send notice to the borrower upon making a determination that the

improved real estate collateral's insurance coverage has expired or is less than the amount required for that particular property, such as upon receipt of the notice of cancellation or expiration from the insurance provider. The notice to the borrower must also state that if the borrower does not obtain the insurance within the 45-day period, the lender will purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees to obtain the coverage. The Act does not permit a lender or its servicer to send the required 45-day notice to the borrower prior to the institution's making a determination that flood insurance is insufficient or lacking (for example, the actual expiration date of the flood insurance policy). If adequate insurance is not obtained by the borrower within the 45-day period, then the insurance must be obtained by the lender on behalf of the borrower.

Another commenter stated that if a lender decides to pay a borrower's current policy premium, this should not be considered to be purchasing a force placed policy. The Agencies agree that it is within a lender's discretion to absorb the costs of a borrower's flood insurance policy anytime during the term of the designated loan. This should not, however, eliminate the borrower's opportunity to obtain appropriate flood insurance coverage, especially during the 45-day period after receiving a force placement notice from the lender. The Agencies revised proposed question and answer 54 (final question and answer 57) to address these commenters' points.

The Agencies also received questions from commenters regarding coverage during the 45-day notice period. Two commenters asked how to ensure that collateral property is protected against flood damage during the 45-day notice period prior to actual force placement. Another commenter asked for more explanation about the coverage that continues in effect for 30 days after the date that a Standard Flood Insurance Policy (SFIP) expires under the NFIP.

Coverage under FEMA's SFIP continues in effect for 30 days from the date that the SFIP lapses. An SFIP specifically provides that, if the insurer decides to cancel or not renew a policy, it will continue in effect for the benefit of only the mortgagee for 30 days after the insurer notifies the mortgagee of the cancellation or nonrenewal. No coverage will be provided for a borrower under the SFIP during this 30-day period. If a lender monitors a mortgage loan with respect to the need for flood insurance coverage, the lender can time the 45-day period to start with the lapse of insurance coverage. Assuming notification is made immediately upon policy cancellation or nonrenewal, coverage will continue in place for the lender/mortgagee's benefit for 30 days of the 45-day notice period. To cover the risk during the remaining 15-day ''gap,'' lenders may purchase private flood insurance to cover the collateral property, as discussed further in section XI below regarding private insurance policies. Lenders in these situations, often purchase what is known in the insurance industry as a ''30-day binder,'' a form of temporary private insurance. The insurance provided by such a binder will cover the 15-day gap and the 15 days subsequent to the end of the notice period. Because these issues lie outside the scope of the Agencies' purview, however, the Agencies decline to include this guidance in the question and answer.

One commenter contended that one of the criteria for force placement in proposed question and answer 54 (final question and answer 57) should be changed from ''[t]he community in which the property is located participates in the NFIP'' to ''flood insurance under the Act is available for improved property securing the loan,'' because properties may also be in Coastal Barrier Resource Areas, Otherwise Protected Areas, or areas designated under section 1316 of the Flood Act. The Agencies have revised final question and answer 57 to reflect this requested change. Another commenter asked whether the citation to ''Appendix A of the FEMA publication'' in proposed question and answer 54 was a reference to the immediately previously cited FEMA procedures that were published in the **Federal Register**. The Agencies have revised final question and answer 57 to clarify the citation.

Proposed question and answer 55 (final question and answer 58), addressed whether a servicer can force place insurance on behalf of a lender. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Proposed question and answer 56 (final question and answer 59) addressed the amount of insurance required when force placement occurs. The Agencies received one comment suggesting that the proposed answer to proposed question 56 not only cross-reference Section II of the Interagency Questions and Answers, but also refer to Section VII, because proposed question and answer 36 in that section pertains to the required amount of flood insurance for home equity loans. The Agencies have made minor clarifications based upon this comment, but otherwise adopt the question and answer as proposed.

The Agencies received comments regarding terminology used in this section. Specifically, two commenters took exception to the use of the term ''force placement,'' arguing that the term conveys an incorrect impression that the borrower is being forced to accept the purchase of flood insurance coverage when the reverse of the situation applies. These commenters suggested that the alternative term ''lender placed'' should be used instead. The current term ''force placement'' is used in the Regulation. Moreover, the term has been widely used since the enactment of the National Flood Insurance Reform Act of 1994. Changing the term may cause confusion. For this reason, the Agencies decline to accept this suggested change.

Another commenter recommended that ''lender single interest policies'' should not be allowed and should be considered in violation of the legal requirements of the Act and Regulation since they are not purchased on the borrower's behalf and do not offer the same or better policy terms to the borrower. As discussed in further detail in the discussion to section XI below, private insurance policies may only be considered an adequate substitute for an SFIP if the policy meets the criteria set forth by FEMA, including the requirement that the coverage be as broad as an SFIP. The Agencies have declined to address this comment specifically because it is believed that the comment is addressed by the general guidance in section XI.

In response to comments received regarding the force placement of flood insurance, the Agencies are proposing three new questions and answers (60, 61, and 62), which are discussed in the **SUPPLEMENTARY INFORMATION** immediately following the Redesignation Table, to be added to Section VII to address the following force-placement issues: when the 45-day notice period should begin, how soon a lender should take action after learning that improved real estate that secures a loan is uninsured or underinsured, and whether a borrower may be charged for the cost of flood insurance coverage during the 45-day notice period.

XI. Private Insurance Policies

Proposed Section XII (final Section XI) addressed the appropriateness of gap or blanket insurance policies, often purchased by lenders to ensure adequate life-of-loan flood insurance coverage for designated loans. The proposed answer to question 57 (final

question and answer 63) explained, generally, that gap or blanket insurance is not an adequate substitute for NFIP insurance. The proposed answer, however, did acknowledge that in limited circumstances, a gap or blanket policy may satisfy flood insurance obligations in instances where NFIP and private insurance for the borrower are otherwise unavailable.

The Agencies received several comments regarding the proposed question and answer. Some industry commenters argued that gap or blanket insurance is a cost-effective alternative to NFIP insurance and should be permitted as a substitute for NFIP insurance in all cases. Other industry commenters argued that gap or blanket insurance should be permitted as a substitute for NFIP insurance under certain circumstances, such as for construction loans or underinsured properties. Still other industry commenters asked the Agencies to clarify the use of the terms ''gap'' and ''blanket'' policies, noting that the common industry understanding is that ''gap'' policies are distinguishable from ''blanket'' policies. In particular, these commenters requested that the Agencies eliminate the prohibition on ''gap'' policies that are meant to cover the deficiency between a borrower's coverage and the amount of insurance required under the Act and Regulation. One industry commenter also noted that there are different types of ''gap'' policies and suggested that the Agencies clarify its intentions to prohibit only certain types of ''gap'' policies. Lastly, commenters also requested general guidance on whether non-NFIP private insurance policies were permitted.

Based on these comments, the Agencies have decided to modify the question and answer to address broader issues of the appropriateness of private insurance. Instead of focusing on whether a policy is called a ''gap'' insurance policy or a ''blanket'' insurance policy, which may depend on how the policy is marketed by the insurer, the Agencies have decided that it is more appropriate to provide guidance to lenders on private insurance policies in general.

The Agencies have revised the answer to the question to provide that a private insurance policy may be an adequate substitute for an NFIP policy if it meets the criteria set forth by FEMA in its *Mandatory Purchase of Flood Insurance Guidelines.*[8] As FEMA has stated in its *Mandatory Purchase of Flood Insurance Guidelines,* to the extent there are any differences between the private insurance policy and an NFIP Standard Flood Insurance Policy, those differences must be evaluated carefully by the lender to determine whether the policy would provide sufficient protection under the Act and Regulation. Lenders must consider the suitability of a private insurance policy only when the mandatory purchase requirements apply. Therefore, if the Act or Regulation does not require the purchase of flood insurance, the lender need not evaluate the policy to determine whether it meets the criteria set forth by FEMA.

The guidance proposed in March 2008 on the limited circumstances when gap or blanket policies are permissible has been revised and is being addressed in a new separate question and answer 64. The answer to final question 64 provides that in the event that a flood insurance policy has expired and the borrower has failed to renew coverage, a private insurance policy that does not meet the criteria set forth by FEMA may nevertheless be useful in protecting the lender during a gap in coverage in the period of time before a force placed policy takes effect. However, the answer further states that the lender must force place NFIP-equivalent coverage in a timely manner and may not rely on non-equivalent coverage on an on-going basis. This is consistent with guidance proposed in March 2008, though the language has been modified in response to commenters who thought this guidance was confusing as worded in the proposal.

Section XII. Required Use of the Standard Flood Hazard Determination Form (SFHDF)

Proposed Section XIII (final Section XII) addressed the required use of the Special Flood Hazard Determination Form (SFHDF). This section and the accompanying questions and answers were originally adopted in the 1997 Interagency Questions and Answers. The changes proposed by the Agencies in March 2008 were designed to provide greater clarity with no intended change in substance and meaning. The agencies received a number of comments on this section.

Proposed question and answer 58 (final question and answer 65), addressed whether the SFHDF replaces the borrower notification form. One commenter suggested the answer clarify the SFHDF's use to the lender and the notification form's use to benefit the borrower. The Agencies agree with the commenter and have revised the proposed answer to be more responsive to the question and to more clearly set out the respective uses of the SFHDF and the borrower notification form. Information about the notice of special flood hazards may be found in section XV. The commenter also suggested that the Agencies should amend the proposed answer to provide that the SFHDF must be used by the lender to determine if the ''improved'' property securing the loan is located in an SFHA. The Regulation specifically provides that a lender must make a flood hazard determination and use the SFHDF when determining whether the ''building or mobile home offered as collateral security for a loan is or will be located in an SFHA in which flood insurance is available under the Act.'' The Agencies agree that it is appropriate to revise the proposed question and answer to conform to the language of the Regulation and have done so.

Proposed question and answer 59 (final question and answer 66), addressed whether a lender is required to provide a copy of the SFHDF to the applicant/borrower. The Agencies received two comments concerning the proposed question and answer. The commenters suggested that the answer should state that the Act does not require that the lender provide the borrower with a copy of the SFHDF. The Agencies have revised the proposed question and answer to note that, while not a statutory requirement, a lender may provide a copy of the flood determination to the borrower so the borrower can provide it to the insurance agent in order to minimize flood zone discrepancies between the lender's determination and the borrower's policy. A lender would also need to make the determination available to the borrower in case of a special flood hazard determination review, which must be requested jointly by the lender and the borrower. In the event a lender provides the SFHDF to the borrower, the signature of the borrower is not required to acknowledge receipt of the form.

Proposed question and answer 60 (final question and answer 67) addressed the use of the SFHDF in electronic format. The Agencies did not receive any substantive comment and adopt the question and answer as proposed.

Proposed question and answer 61 (final question and answer 68) addressed the circumstances when a lender may rely on a previous special flood hazard determination. The Agencies received several comments concerning this question and answer. One commenter suggested that, if a lender maintains life-of-loan tracking, there is little benefit in obtaining a new special flood hazard determination

[8] FEMA, Mandatory Purchase of Flood Insurance Guidelines, at 57–58.

when renewing, refinancing, or extending a loan if the original determination is older than seven years. The authority to rely on a previous determination made within the previous seven years if that determination meets certain requirements is statutory (42 U.S.C. 4104b(e)). Accordingly, seven years is the maximum period during which a lender may rely on a previous determination, even if the lender has maintained life-of-loan tracking.

Two commenters suggested that the proposed question and answer should also address whether a lender may rely on one determination if a lender makes multiple loans to one borrower, all of which are secured by the same improved property. For example, it should address when a lender may rely on a single determination when making a home purchase loan and a subsequent home equity loan, both secured by the same residence. The situation described by the commenters is similar to the example of a refinancing or assumption by a lender, which obtained the original flood determination on the same security property. In that case, the question and answer states that the lender may rely on the original determination if the original determination was made not more than seven years before the date of the transaction, the basis of the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made. The Agencies based this interpretation on the premise that a refinancing would be the functional equivalent of either a loan extension or renewal. Subsequent loans to the same borrower secured by the same improved real estate could be deemed to be the functional equivalent of increasing the amount of the original loan. Therefore, if the original determination was made not more than seven years before the date of the transaction, the basis of the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made, a lender may similarly rely on a previous determination if the lender makes multiple loans that are secured by the same building or mobile home. The Agencies have revised the proposed question and answer to also address subsequent loans by the same lender secured by the same improved real estate.

Section XIII. Flood Determination Fees

Proposed Section XIV (final Section XIII) consisted of proposed questions and answers 62 and 63 (final questions and answers 69 and 70 respectively), which addressed fees charged when making a flood determination and charging fees to cover life-of-loan monitoring of a loan, respectively. The Agencies received two comments on these questions and answers. One commenter supported them; the other commenter asked whether a lender could charge an up-front, nonrefundable, composite determination and life-of-loan fee regardless of whether the loan application closes. The Act and Regulation allow a lender to charge a reasonable fee for determining whether a building or mobile home securing a loan is located or will be located in a special flood hazard area if the determination is made in connection with the making, increasing, extending, or renewing of a loan that is initiated by the borrower. In the commenter's situation, the Agencies would agree that a fee for an initial determination could be charged when the determination is procured in connection with an application initiated by an applicant, even if the application does not close. However, a lender cannot charge a life-of-loan fee if the application does not close. Such a fee would be an unearned fee and, as such, charging such a fee would be prohibited by section 8 of RESPA. Therefore, a lender may not charge a nonrefundable, composite determination and life-of-loan fee when a loan application does not close. The Agencies have adopted the former question and answer as proposed. The Agencies have revised the latter question and answer in response to the comment.

Section XIV. Flood Zone Discrepancies

Proposed Section XV (final Section XIV) addressed flood zone discrepancies between the flood hazard designation documented by the lender on the SFHDF and the one documented on the flood insurance policy and used to rate the policy. There were numerous negative comments concerning the Agencies' proposed guidance for dealing with such discrepancies.

Proposed question and answer 64 (final question and answer 71) addressed lenders' recourse when confronted with a flood zone discrepancy. Nineteen commenters were generally opposed to the proposed treatment of a discrepancy as set forth in the proposed question and answer. Several of these commenters argued that the Act does not require lenders to identify and resolve flood zone discrepancies and ensure that a flood insurance policy is properly rated. Other commenters argued that it is an undue burden to expect financial institutions to resolve discrepancies between the SFHDF and the flood insurance policy. Six commenters maintained that it is an insurance agent's responsibility to determine the correct flood zone and that a lender should not be responsible for auditing an NFIP-authorized insurance agent. These commenters argued that requiring lenders to document every flood zone discrepancy would be costly and burdensome and require extensive loan servicing system changes.

Two commenters stated that the Agencies need to clearly define ''zone discrepancy.'' Another commenter asked what action would be required to correct any ''violation'' and further inquired how much flood insurance should be force placed in such a situation if a lender wants to correct a discrepancy by means of force placement. Two other commenters said that a borrower will not want to obtain a Letter of Determination Review from FEMA at a cost of $80 when there is a dispute between the lender and insurance company over a flood zone discrepancy, while three other commenters noted that it is unreasonable to expect the parties to wait 45 days for a FEMA determination review. Finally, two commenters noted that if a coverage error occurs, the borrower or lender may reconcile this through payment of the premium differential (the amount of premium that would have been charged if the policy had been correctly rated) or FEMA may reduce the amount of claim payment.

The Agencies disagree with those commenters who argued against a lender being responsible for resolving flood zone designation discrepancies, either as a legal matter or because the requirement would be burdensome and costly. The Agencies agree, and FEMA concurs, that Federal law places the ultimate responsibility to ensure appropriate flood insurance coverage on the lender. The Agencies note that, although coverage errors can be mitigated after a flood loss by paying premium differentials or reducing the claim payment, these mitigation techniques do not relieve a lender of the responsibility to ensure that an appropriate amount of flood insurance coverage is in place when a loan is made.

Commenters, however, raised valid points with respect to the proposed process for resolving flood zone

discrepancies. To address these points, the Agencies have revised final question and answer 71 to specify that lenders need only address discrepancies between high-risk zones (Zones A or V) and moderate- or low-risk zones (Zones B, C, D, or X). The revised question and answer further specifies the actions a lender should take if such a zone discrepancy is found to exist. Those steps continue to include attempting to determine whether the discrepancy is a result of a legitimate reason, such as grandfathering, or is a mistake. In certain circumstances, submitting a request for a Determination Review to FEMA may be an appropriate means of resolving discrepancies; however, it is not required in all situations. The question and answer explains that if the discrepancy is not resolved, the lender should send a letter to the insurance agent and/or the insurance company reminding them of FEMA's April 16, 2008, instruction that, in cases of determination discrepancies, the policy should be written to cover the higher risk zone. Beyond that, no further action by the lender is required. If, for its own purposes, the lender believes force placement is appropriate, then it should consult the guidance on that topic found in Sections II and X.

Proposed question and answer 65 (final question and answer 72), addressed whether lenders can be found in violation of the Act and Regulation for flood zone discrepancies. Seven commenters either registered their opposition to the proposed question and answer or recommended that it be deleted outright. These commenters argued, similar to their comments on proposed question and answer 64, that the lender is the wrong person to resolve flood zone discrepancies, that it is instead the responsibility of the insurance agent and the company issuing the flood insurance policy to ensure that the flood zone is correct, and that imposing this requirement on lenders is an unnecessary burden not mandated by law. Another commenter argued that by sanctioning lenders for not successfully identifying and resolving flood zone discrepancies, the two proposed questions and answers would create a duty to ensure that the flood policy is rated properly that does not presently exist under the Act or the Regulation.

As noted above, the Act and the Regulation require lenders to ensure that an appropriate amount of flood insurance coverage is purchased; lenders, therefore, should take steps to identify and address flood zone discrepancies. If a pattern or practice of unresolved discrepancies is found in a lender's loan portfolio, due to a lack of effort on the lender's part to resolve such discrepancies using the process outlined in final question and answer 71, the Agencies may cite the lender for a violation of the mandatory purchase requirements.

Section XV. Notice of Special Flood Hazards and Availability of Federal Disaster Relief

Proposed Section XVI (final Section XV) addressed the notice of special flood hazards and the availability of Federal disaster relief that lenders are generally required to provide to borrowers. The proposed questions and answers primarily proposed only minor wording changes or clarifications to questions and answers in the 1997 Interagency Questions and Answers without any change in the substance or meaning.

Proposed question and answer 66 (final question and answer 73), addressed whether the notice had to be provided to each borrower for each real estate related loan. The proposed answer explained that in a transaction involving multiple borrowers, the lender is only required to send notice to one borrower, but may provide multiple notices if the lender chooses. The Agencies received a comment on a related issue asking who should receive the notice if, at the time of increase, real estate collateral has been hypothecated by a guarantor as security on the borrower's loan. If a lender takes a security interest in improved real estate owned by a guarantor (not simply pledged by a guarantor) located in an SFHA, then flood insurance is required and the notice should be sent to both the borrower and the guarantor.

Another commenter asked when borrowers have to be notified that their secured property is in a flood zone. The commenter noted that their examiners have previously said ten days prior to loan closing. As noted in the Regulation, lenders are required to provide notice within a reasonable time before completion of the transaction (loan closing). What constitutes ''reasonable'' notice will necessarily vary according to the circumstances of particular transactions. Regulated lending institutions should bear in mind, however, that a borrower should receive notice timely enough to ensure that (1) the borrower has the opportunity to become aware of the borrower's responsibilities under the NFIP; and (2) where applicable, the borrower can purchase flood insurance before completion of the loan transaction. In light of these considerations, the final question and answer does not establish a fixed time period during which a lender must provide the notice to the borrower. The Agencies generally continue to regard ten days as a ''reasonable'' time interval. The Agencies adopt the question and answer as proposed.

Proposed question and answer 67 (final question and answer 74) addressed how the notice requirement applied to loans secured by mobile homes where the location of the mobile home may not be known until just prior to, or sometimes after, the loan closing. The Agencies did not receive any substantive comments and adopt the question and answer as proposed.

Proposed question and answer 68 (final question and answer 75), addressed when the lender is required to provide notice to the loan servicer that flood insurance is required. Proposed question and answer 69 (final question and answer 76) addressed what constitutes appropriate notice to the loan servicer. Proposed question and answer 70 (final question and answer 77) addressed whether it was necessary for the lender to provide notice to a loan servicer affiliated with the lender. Proposed question and answer 71 (final question and answer 78) addressed how long a lender has to maintain the record of receipt by the borrower of the notice. The Agencies received one comment that was supportive of these proposed questions and answers. The Agencies adopt the questions and answers as proposed.

Proposed question and answer 72 (final question and answer 79), addressed whether a lender can rely on a previous notice that is less than seven years old and was given to the same borrower for the same property by the same lender. Two commenters stated that lenders should be able to waive a notice to a borrower when they already have adequate flood insurance and one commenter said that notice should not be required when there has not been a change in the flood map. The Act and Regulation require lenders to send notice when a lender makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area. Therefore, as a statutory requirement, the notice may not be waived. The Agencies adopt the question and answer as proposed.

Proposed question and answer 73 (final question and answer 80), addressed whether the use of the sample form of notice is mandatory. The Agencies received one comment that was supportive of the proposed question and answer; however, another commenter asked whether lenders

should use the revised version of the Sample Form of the Notice provided by FEMA in 2007 or the sample notice that accompanies the Regulation. The Agencies do not require the use of a specific form so long as the form contains the required information as specified by the Act and Regulation. The Agencies revised the answer, to reflect that the sample form of the notice provided by FEMA in its *Mandatory Purchase of Flood Insurance Guidelines* is also not required to be used.

Section XVI. Mandatory Civil Money Penalties

Proposed Section XVII (final Section XVI) addressed the imposition of mandatory civil money penalties for violations of the flood insurance requirements. Proposed question and answer 74 (final question and answer 81) listed the sections of the Act that trigger mandatory civil money penalties when examiners find a pattern or practice of violations of those sections and included information about statutory limits on the amount of such penalties. The Agencies did not receive any comments and adopt the question and answer as proposed.

Proposed question and answer 75 (final question and answer 82) addressed the general standards the Agencies consider when determining whether violations constitute a pattern or practice for which civil money penalties are mandatory. The Agencies received one industry trade group comment suggesting that proposed question and answer 75 be amended to clarify that the assessment of civil money penalties be based on an overall assessment of the entire loan portfolio and not randomly selected representations. The Agencies believe that the guidance in this question and answer properly sets forth the general standards the Agencies consider when determining whether a pattern or practice of violations has occurred. As discussed in the March 2008 Proposed Interagency Questions and Answers, the considerations listed in the proposed question and answer are not dispositive of individual cases, but serve as a reference point for reviewing the particular facts and circumstances. The Agencies adopt the question and answer as proposed.

Redesignation Table

The following redesignation table is provided as an aid to assist the public in reviewing the revisions to the 1997 Interagency Questions and Answers.

1997 Interagency questions and answers	Current questions and answers
Section I. Definitions	
Section I, Question 1	Section IV, Question 20.
Section I, Question 2	Section IV, Question 19.
Section I, Question 3	Section VII, Question 34.
Section I, Question 4	Section VII, Question 35.
Section I, Question 5	Section VII, Question 38.
Section I, Question 6	Section VII, Question 39; and Section VII, Question 40.
Section I, Question 7	Section VII, Question 41.
Section I, Question 8	Section VII, Question 42.
Section I, Question 9	Section I, Question 5.
Section I, Question 10	Section VII, Question 43.
Section II. Requirement to Purchase Flood Insurance Where Available.	
Section II, Question 1	Section I, Question 1.
Section II, Question 2	Section I, Question 3.
Section II, Question 3	Section I, Question 6.
Section II, Question 4	Deleted as obsolete.
Section II, Question 5	Section II, Question 15.
Section II, Question 6	Section VIII, Question 44.
Section II, Question 7	Section II, Question 14; and Section V, Question 25.
Section II, Question 8	Section VI, Question 28.
Section II, Question 9	Section VI, Question 31.
Section III. Exemptions.	Section III. Exemptions from the mandatory flood insurance requirements.
Section III, Question 1	Section III, Question 18.
Section IV. Escrow Requirements.	Section IX. Escrow requirements.
Section IV, Question 1	Deleted as obsolete.
Section IV, Question 2	Section IX, Question 51.
Section IV, Question 3	Section IX, Question 52.
Section IV, Question 4	Section IX, Question 53.
Section IV, Question 5	Section IX, Question 54.
Section IV, Question 6	Section IX, Question 55.
Section IV, Question 7	Section IX, Question 56.
Section V. Required Use of Standard Flood Hazard Determination Form (SFHDF).	Section XII. Required use of Standard Flood Hazard Determination Form (SFHDF).
Section V, Question 1	Section XII, Question 65.
Section V, Question 2	Section XII, Question 66.
Section V, Question 3	Section XII, Question 67.
Section V, Question 4	Section XII, Question 68.
Section V, Question 5	Section VII, Question 36; and Section VII, Question 37
Section VI. Force Placement of Flood Insurance.	Section X. Force placement of flood insurance.
Section VI, Question 1	Section X, Question 57.
Section VI, Question 2	Section X, Question 58.
Section VI, Question 3	Section X, Question 59.
Section VII. Determination Fees.	Section XIII. Flood determination fees.
Section VII Question 1	Section XIII, Question 69.
Section VII Question 2	Section XIII, Question 70.
Section VIII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief.	Section XV. Notice of special flood hazards and availability of Federal disaster relief.
Section VIII, Question 1.	Section XV, Question 73
Section VIII, Question 2.	Section XV, Question 74.
Section VIII, Question 3.	Section XV, Question 75.
Section VIII, Question 4.	Section XV, Question 76.
Section VIII, Question 5.	Section XV, Question 77.
Section VIII, Question 6.	Section XV, Question 78.
Section IX. Notice of Servicer's Identity.	Section VIII. Flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights.
Section IX, Question 1	Section VIII, Question 45.
Section IX, Question 2	Section VIII, Question 46.
Section IX, Question 3	Section VIII, Question 47.
Section IX, Question 4	Section VIII, Question 48.
Section IX, Question 5	Section VIII, Question 49.
Section IX, Question 6	Section VIII, Question 50.
Section X Appendix A to the Regulation—Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.	Section XV. Notice of special flood hazards and availability of Federal disaster relief.
Section X, Question 1	Section XV, Question 80.

Proposed Questions and Answers and Request for Comment

The Agencies are proposing five new questions and answers for public

comment upon consideration of various comments received on the March 2008 Proposed Interagency Questions and Answers. The new proposed questions and answers concern the determination of insurable value in calculating the maximum limit of coverage available for the particular type of property under the Act and force placement of required flood insurance. In anticipation of the possible adoption of these proposed questions and answers, the applicable question and answer numbers have been reserved and the remaining questions and answers have been renumbered accordingly.

Insurable value. The Agencies received numerous comments to proposed question and answer 7 stating that implementing insurable value was confusing and that the term needed clear and objective standards. Commenters asked for guidance on the terms ''overall value'' and ''repair or replacement cost'' as they relate to a lender's determination of the required amount of flood insurance for a designated loan. Commenters similarly asked the Agencies to define the term ''actual cash value.'' In response to these comments, the Agencies are proposing new questions and answers 9 and 10 for public comment to address how to calculate insurable value. Calculating insurable value is important because in addition to the maximum caps under the Act, the Regulation provides that ''flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.'' The Agencies use the term ''insurable value'' in the proposed question and answer to mean the overall value minus the value of the land.

FEMA guidelines state that the full insurable value of a building is the same as 100 percent replacement cost value (RCV) of the insured building.[9] Replacement cost value, according to FEMA's *Mandatory Purchase of Flood Insurance Guidelines,* is the cost to replace property with the same kind of material and construction without deduction for depreciation.[10] As such, it is important to make clear that the RCV of a building is not its contributory value to the overall appraised value of the collateral and does not include any value for any land that is also part of collateral. When determining the RCV of a building, lenders (either by themselves or in consultation with the flood insurance provider or other professionals) should consider the replacement cost value under a hazard insurance policy, an appraisal based on a cost-value before depreciation deductions (not a market-value) approach, and/or a construction cost calculation.

The statutory and regulatory requirement that flood insurance be obtained in the amount of the lesser of the principal balance of the designated loan or the maximum limit of coverage available for the particular type of building under the Act is separate from the amount of a recovery if the improved property is destroyed by flood. Insurable value is replacement cost value and would be the amount required for adequate insurance coverage assuming that amount does not exceed the principal balance of the designated loan or the maximum limit of coverage under the Act. Actual cash value, which would be determined by a claims adjuster at the time of loss, is the amount that will be paid by the NFIP for nonresidential properties and certain residential properties. To lessen the effect of a potential difference between the two values with certain nonresidential buildings, the Agencies, with FEMA's concurrence, are proposing new questions and answers 9 and 10.

It is important for lenders to recognize that insurable value is only relevant to the extent that it is lower than either the outstanding principal balance of the loan or the maximum amount of insurance available under the NFIP. Therefore, if the insurable value of a building is the lesser of the outstanding principal balance of the loan or the maximum amount of insurance allowable under the NFIP, then the building must be insured at its insurable value, which for single family, 2–4 family, other residential or nonresidential buildings, is equivalent to its RCV. The Agencies are proposing new question and answer 9 to provide more concrete guidance on insurable value.

►*9. What is the insurable value of a building?*

Answer: Per FEMA guidelines, the insurable value of a building is the same as 100 percent replacement cost value of the insured building. FEMA's Mandatory Purchase of Flood Insurance Guidelines defines replacement cost as ''The cost to replace property with the same kind of material and construction without deduction for depreciation.'' When determining replacement cost value of a building, lenders (either by themselves or in consultation with the flood insurance provider or other professionals) should consider the replacement cost value used in a hazard insurance policy (recognizing that replacement cost for flood insurance will include the foundation), an appraisal based on a cost-value approach before depreciation deductions (not a market-value), and/or a construction cost calculation.◄

In considering the comments submitted on the subject of insurable value, the Agencies recognized that there are situations when insuring some nonresidential buildings at RCV would result in the building being over-insured. The Agencies, in consultation with FEMA, are proposing two alternatives to determine replacement cost value for nonresidential buildings used for ranching, farming, or industrial purposes, which the borrower either would not replace if damaged or destroyed by a flood or would replace with a structure more closely aligned to the function the building is providing at the time of the flood. Industrial use, as opposed to the broader commercial use, is defined as those buildings not directly engaged in the retail and/or wholesale sale of the business's goods, such as warehouses or storage, manufacturing, or maintenance facilities.

The first alternative is the ''functional building cost value,'' which is the cost to repair or replace a building with commonly used, less costly construction materials and methods that are functionally equivalent to obsolete, antique, or custom construction materials and methods used in the original construction of the building. Borrowers and/or lenders can choose this alternative when the building being insured is important to the business operation and would be replaced if damaged or destroyed by a flood, but not to its original condition. The ''functional building cost value'' recognizes that insurance to the replacement cost is not needed as the borrower would not repair or replace the building back to its original form but to a condition that represents the function the building is providing to the business operation.

The second alternative is the ''demolition/removal cost value,'' which is the cost to demolish the remaining structure and remove the debris after a flood. Borrowers and/or lenders can choose this alternative when the building being insured is not important to the business operation and would not be repaired or replaced if damaged or destroyed by a flood. The ''demolition/removal cost value'' recognizes that the building has limited-to-no-value and

[9] FEMA, Mandatory Purchase of Flood Insurance Guidelines, at 27.

[10] FEMA, Mandatory Purchase of Flood Insurance Guidelines, at GLS10.

that it does not provide an important enough function to necessitate that the business repair or replace it.

When a borrower or lender chooses one of these two replacement cost value alternatives they have determined that the building to be insured will not be insured to its full replacement cost value. Both the borrower and the lender should ensure that they consider the impact this may have on the ongoing nature of the business and the value of the collateral securing the loan. Full replacement cost is always the preferred insurance amount. These alternatives are available only for those situations where full replacement cost would result in a building used for farming, ranching, or industrial purposes being over-insured. The Agencies are proposing new question and answer 10 to address this issue.

►*10. Are there alternative approaches to determining the insurable value of a building?*

Answer: Yes, in the case of buildings used for ranching, farming, and industrial purposes, insurable value may also be determined by the functional building cost value or the demolition/removal cost value. The Agencies recognize that there are situations where insuring some nonresidential buildings to the replacement cost value will result in the building being over-insured. Therefore, borrowers and/or lenders have two alternative approaches to determine the insurable value for buildings used in ranching, farming, and for industrial purposes when the borrower would either not replace the building if damaged or destroyed by a flood or would replace the building with a structure more closely aligned with the function the building is presently providing. Industrial use, as opposed to the broader commercial use, means those buildings not directly engaged in the retail and/or wholesale sale of the business's goods, such as warehouses, storage, manufacturing, or maintenance facilities.

• The lender may calculate the insurable value as the ''functional building cost value,'' that is, the cost to replace a building with a lower-cost functional equivalent. The ''functional building cost value'' is the cost to repair or replace a building with commonly used, less costly construction materials and methods that are functionally equivalent to obsolete, antique, or custom construction materials and methods used in the original construction of the building. The determination of the appropriate ''functional building cost value'' amount of insurance should be made by the lender and/or borrower. This alternative may be chosen when the building is important to the ongoing nature of the business and would be replaced if damaged or destroyed in a flood, but not to its original form. For example, a farming operation would replace an old dairy barn currently used for storage with a storage building of pole, or some other type of less costly construction found currently in storage buildings.

• The lender may calculate the insurable value as the ''demolition/removal cost value,'' that is the cost to demolish the remaining structure and remove the debris. The ''demolition/removal cost value'' may be used when a building is not important to the ongoing nature of the business and as such would not be replaced if damaged or destroyed by a flood. The amount of flood insurance should be calculated by the lender and/or borrower to be at least the cost of demolition and removal of the insured debris.

Regardless of what method the lender and/or borrower selects to determine insurable value (replacement cost value or one of the two alternatives), all terms and conditions of the Standard Flood Insurance Policy apply including its Loss Settlement provision.◄

Force placement. In response to comments received regarding the force placement of flood insurance, the Agencies are proposing new questions and answers 60, 61, and 62, which would be added to Section X to address the following force-placement issues: whether a borrower may be charged for the cost of flood insurance coverage during the 45-day notice period, when the 45-day notice period should begin, and how soon a lender should take action after learning that improved real estate that secures a loan is uninsured or under-insured.

Several commenters requested clarification regarding timing issues related to the 45-day notice. One commenter requested clarification on whether the 45-day notice could be sent prior to the actual date of expiration of flood insurance coverage. The Act and Regulation require the lender, or its servicer, to send notice to the borrower upon making a determination that the improved real estate collateral's insurance coverage has expired or is less than the amount required for that particular property, such as upon receipt of the notice of cancellation or expiration from the insurance provider or as a result of an internal flood policy monitoring system. The borrower must obtain flood insurance within 45 days after notification by the lender; however, the 45-day period cannot begin until the lender or servicer has sent notice to the borrower. Furthermore, the Act does not permit a lender or its servicer to send the 45-day notice to the borrower prior to the actual expiration date of the flood insurance policy.

Another commenter suggested that flood insurance be force placed through private insurers since this would allow flood insurance coverage to be immediately available instead of having to wait 45 days. Whether the lender plans to force place coverage through FEMA or private insurers, lenders must allow the borrower 45 days in which to obtain flood insurance. The Agencies are proposing new question and answer 60 to address these commenters' issues.

►*60. Can the 45-day notice period be accelerated by sending notice to the borrower prior to the actual date of expiration of flood insurance coverage?*

Answer: No. Although a lender or servicer may send a notice warning a borrower that flood insurance on the collateral is about to expire, the Act and Regulation do not allow a lender or its servicer to shorten the 45-day force-placement notice period by sending notice to the borrower prior to the actual expiration date of the flood insurance policy. The Act provides that a lender or its servicer must notify a borrower if it determines that the improved real estate collateral's insurance coverage has expired or is less than the amount required for that particular property. 42 U.S.C. 4012a(e). A lender must send the notice upon making a determination that the flood insurance coverage is inadequate or has expired, such as upon receipt of the notice of cancellation or expiration from the insurance provider or as a result of an internal flood policy monitoring system. This notice must allow the borrower 45 days in which to obtain flood insurance.◄

Three commenters asserted that it would be appropriate for the Agencies to allow a reasonable period to implement force placement after the end of the 45-day notice period. The Regulation provides that the lender or its servicer shall purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. Given that the lender is already aware during the 45-day notice period that it may be required to force place insurance if there is no response from the borrower, any delay should be brief. Where there is a brief delay in force placing required insurance, the Agencies will expect the lender to provide a reasonable explanation for the delay. The Agencies

are proposing new question and answer 61 to address these commenters' concern.

One commenter suggested that a lender's procurement of the flood insurance binder should be acceptable under the Act and Regulation to satisfy the force placement requirement. The Agencies believe that the insurance binder may provide a reasonable explanation for a delay in force placing the formal flood insurance policy. However, an insurance binder is proof only of temporary coverage for a limited period of time until the formal insurance policy is either accepted or denied. Lenders should have sufficient internal controls in place to ensure that if a formal policy is not issued, it should force place required insurance immediately.

►*61. When must the lender have flood insurance in place if the borrower has not obtained adequate insurance within the 45-day notice period?*

Answer: The Regulation provides that the lender or its servicer *shall* purchase insurance on the borrower's behalf if the borrower fails to obtain flood insurance within 45 days after notification. However, where there is a brief delay in force placing required insurance, the Agencies will expect the lender to provide a reasonable explanation for the delay.◄

Two commenters asked whether it is permissible to charge a borrower for the cost of insurance during all or a portion of the 45-day notice period. Regardless of whether the flood insurance coverage is obtained through FEMA or by private means, under the Act and Regulation, lenders may not impose the cost of coverage for that 45-day period at any time. The Agencies are proposing new question and answer 62 to address this comment.

►*62. Does a lender or its servicer have the authority to charge a borrower for the cost of insurance coverage during the 45-day notice period?*

Answer: No. There is no authority under the Act and Regulation to charge a borrower for a force-placed flood insurance policy until the 45-day notice period has expired. The ability to impose the costs of force placed flood insurance on a borrower commences 45 days after notification to the borrower of a lack of insurance or of inadequate insurance coverage. Therefore, lenders may not charge borrowers for coverage during the 45-day notice period. This holds true regardless of whether the force placed flood insurance is obtained through the NFIP or a private provider.◄

Public Comments

The Agencies specifically invite public comment on the proposed new questions and answers. If financial institutions, bank examiners, community groups, or other interested parties have unanswered questions or comments about the Agencies' flood insurance regulation, they should submit them to the Agencies. The Agencies will consider including these questions and answers in future guidance.

Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. 4809, requires the Federal banking Agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. Although this document is not a proposed rule, comments are nevertheless invited on whether the proposed questions and answers are stated clearly and how they might be revised to be easier to read.

The text of the Interagency Questions and Answers follows:

Interagency Questions and Answers Regarding Flood Insurance

The Interagency Questions and Answers are organized by topic. Each topic addresses a major area of the Act and Regulation. For ease of reference, the following terms are used throughout this document: ''Act'' refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994 (codified at 42 U.S.C. 4001 *et seq.*). ''Regulation'' refers to each agency's current final rule.[11] The OCC, Board, FDIC, OTS, NCUA, and FCA (collectively, ''the Agencies'') are providing answers to questions pertaining to the following topics:

I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation
II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation
III. Exemptions From the Mandatory Flood Insurance Requirements
IV. Flood Insurance Requirements for Construction Loans
V. Flood Insurance Requirements for Nonresidential Buildings
VI. Flood Insurance Requirements for Residential Condominiums
VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA
VIII. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights
IX. Escrow Requirements
X. Force Placement of Flood Insurance
XI. Private Insurance Policies
XII. Required Use of Standard Flood Hazard Determination Form (SFHDF)
XIII. Flood Determination Fees
XIV. Flood Zone Discrepancies
XV. Notice of Special Flood Hazards and Availability of Federal Disaster Relief
XVI. Mandatory Civil Money Penalties

I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation

1. Does the Regulation apply to a loan where the building or mobile home securing such loan is located in a community that does not participate in the National Flood Insurance Program (NFIP)?

Answer: Yes. The Regulation does apply; however, a lender need not require borrowers to obtain flood insurance for a building or mobile home located in a community that does not participate in the NFIP, even if the building or mobile home securing the loan is located in a Special Flood Hazard Area (SFHA). Nonetheless, a lender, using the standard Special Flood Hazard Determination Form (SFHDF), must still determine whether the building or mobile home is located in an SFHA. If the building or mobile home is determined to be located in an SFHA, a lender is required to notify the borrower. In this case, a lender, generally, may make a conventional loan without requiring flood insurance, if it chooses to do so. However, a lender may not make a government-guaranteed or insured loan, such as a Small Business Administration, Veterans Administration, or Federal Housing Administration loan secured by a building or mobile home located in an SFHA in a community that does not participate in the NFIP. *See* 42 U.S.C. 4106(a). Also, a lender is responsible for exercising sound risk management practices to ensure that it does not make a loan secured by a building or mobile home located in an SFHA where no flood insurance is available, if doing so would be an unacceptable risk.

2. What is a lender's responsibility if a particular building or mobile home that secures a loan, due to a map change, is no longer located within an SFHA?

Answer: The lender is no longer obligated to require mandatory flood insurance; however, the borrower can

[11] The Agencies' rules are codified at 12 CFR part 22 (OCC), 12 CFR part 208 (Board), 12 CFR part 339 (FDIC), 12 CFR part 572 (OTS), 12 CFR part 614 (FCA), and 12 CFR part 760 (NCUA).

elect to convert the existing NFIP policy to a Preferred Risk Policy. For risk management purposes, the lender may, by contract, continue to require flood insurance coverage.

3. Does a lender's purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, from another lender trigger any requirements under the Regulation?

Answer: No. A lender's purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, alone, is not an event that triggers the Regulation's requirements, such as making a new flood determination or requiring a borrower to purchase flood insurance. Requirements under the Regulation, generally, are triggered when a lender makes, increases, extends, or renews a designated loan. A lender's purchase of a loan does not fall within any of those categories.

However, if a lender becomes aware at any point during the life of a designated loan that flood insurance is required, the lender must comply with the Regulation, including force placing insurance, if necessary. Depending upon the circumstances, safety and soundness considerations may sometimes necessitate such due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance. If the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Regulation.

4. How do the Agencies enforce the mandatory purchase requirements under the Act and Regulation when a lender participates in a loan syndication or participation?

Answer: As with purchased loans, the acquisition by a lender of an interest in a loan either by participation or syndication after that loan has been made does not trigger the requirements of Act or Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance. Nonetheless, as with purchased loans, depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake due diligence to protect itself against the risk of flood or other types of loss.

Lenders who pool or contribute funds that will be simultaneously advanced to a borrower or borrowers as a loan secured by improved real estate would all be subject to the requirements of Act or Regulation. Federal flood insurance requirements would also apply to those situations where such a group of lenders decides to extend, renew or increase a loan. Although the agreement among the lenders may assign compliance duties to a lead lender or agent, and include clauses in which the lead lender or agent indemnifies participating lenders against flood losses, each participating lender remains individually responsible for ensuring compliance with the Act and Regulation. Therefore, the Agencies will examine whether the regulated institution/participating lender has performed upfront due diligence to ensure both that the lead lender or agent has undertaken the necessary activities to ensure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an ongoing basis for compliance with the flood insurance requirements. Further, the Agencies expect the participating lender to have adequate controls to monitor the activities of the lead lender or agent to ensure compliance with flood insurance requirements over the term of the loan.

5. Does the Regulation apply to loans that are being restructured or modified?

Answer: It depends. If the loan otherwise meets the definition of a designated loan and if the lender increases the amount of the loan, or extends or renews the terms of the original loan, then the Regulation applies.

6. Are table funded loans treated as new loan originations?

Answer: Yes. Table funding, as defined under HUD's Real Estate Settlement Procedure Act (RESPA) rule, 24 CFR 3500.2, is a settlement at which a loan is funded by a contemporaneous advance of loan funds and the assignment of the loan to the person advancing the funds. A loan made through a table funding process is treated as though the party advancing the funds has originated the loan. The funding party is required to comply with the Regulation. The table funding lender can meet the administrative requirements of the Regulation by requiring the party processing and underwriting the application to perform those functions on its behalf.

7. Is a lender required to perform a review of its, or of its servicer's, existing loan portfolio for compliance with the flood insurance requirements under the Act and Regulation?

Answer: No. Apart from the requirements mandated when a loan is made, increased, extended, or renewed, a regulated lender need only review and take action on any part of its existing portfolio for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage. Regardless of the lack of such requirement in the Act and Regulation, however, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.

II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation

8. The Regulation states that the amount of flood insurance required ''must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.'' What is meant by the ''maximum limit of coverage available for the particular type of property under the Act''?

Answer: ''The maximum limit of coverage available for the particular type of property under the Act'' depends on the value of the secured collateral. First, under the NFIP, there are maximum caps on the amount of insurance available. For single-family and two-to-four family dwellings and other residential buildings located in a participating community under the regular program, the maximum cap is $250,000. For nonresidential structures located in a participating community under the regular program, the maximum cap is $500,000. (In participating communities that are under the emergency program phase, the caps are $35,000 for single-family and two-to-four family dwellings and other residential structures, and $100,000 for nonresidential structures).

In addition to the maximum caps under the NFIP, the Regulation also provides that ''flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located,'' which is commonly referred to as the ''insurable value'' of a structure. The NFIP does not insure land; therefore, land values should not be included in the calculation.

An NFIP policy will not cover an amount exceeding the ''insurable value'' of the structure. In determining coverage amounts for flood insurance, lenders often follow the same practice used to establish other hazard insurance coverage amounts. However, unlike the insurable valuation used to underwrite most other hazard insurance policies, the insurable value of improved real

estate for flood insurance purposes also includes the repair or replacement cost of the foundation and supporting structures. It is very important to calculate the correct insurable value of the property; otherwise, the lender might inadvertently require the borrower to purchase too much or too little flood insurance coverage. For example, if the lender fails to exclude the value of the land when determining the insurable value of the improved real estate, the borrower will be asked to purchase coverage that exceeds the amount the NFIP will pay in the event of a loss. (Please note, however, when taking a security interest in improved real estate where the value of the land, excluding the value of the improvements, is sufficient collateral for the debt, the lender must nonetheless require flood insurance to cover the value of the structure if it is located in a participating community's SFHA).

9. What is insurable value?

Answer: [Reserved]

10. Are there any alternatives to the definition of insurable value?

Answer: [Reserved]

11. What are examples of residential buildings?

Answer: Residential buildings include one-to-four family dwellings; apartment or other residential buildings containing more than four dwelling units; condominiums and cooperatives in which at least 75 percent of the square footage is residential; hotels or motels where the normal occupancy of a guest is six months or more; and rooming houses that have more than four roomers. A residential building may have incidental nonresidential use, such as an office or studio, as long as the total area of such incidental occupancy is limited to less than 25 percent of the square footage of the building, or 50 percent for single-family dwellings.

12. What are examples of nonresidential buildings?

Answer: Nonresidential buildings include those used for small businesses, churches, schools, farm activities (including grain bins and silos), pool houses, clubhouses, recreation, mercantile structures, agricultural and industrial structures, warehouses, hotels and motels with normal room rentals for less than six months' duration, nursing homes, and mixed-use buildings with less than 75 percent residential square footage.

13. How much insurance is required on a building located in an SFHA in a participating community?

Answer: The amount of insurance required by the Act and Regulation is the lesser of:

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
  - The maximum limit available for the type of structure; or
  - The ''insurable value'' of the structure.

Example: (Calculating insurance required on a nonresidential building):

Loan security includes one equipment shed located in an SFHA in a participating community under the regular program.

- Outstanding loan principal is $300,000.
- Maximum amount of insurance available under the NFIP:
  - Maximum limit available for type of structure is $500,000 per building (nonresidential building).
  - Insurable value of the equipment shed is $30,000.

The minimum amount of insurance required by the Regulation for the equipment shed is $30,000.

14. Is flood insurance required for each building when the real estate security contains more than one building located in an SFHA in a participating community? If so, how much coverage is required?

Answer: Yes. The lender must determine the amount of insurance required on each building and add these individual amounts together. The total amount of required flood insurance is the lesser of:

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
  - The maximum limit available for the type of structures; or
  - The ''insurable value'' of the structures.

The amount of total required flood insurance can be allocated among the secured buildings in varying amounts, but all buildings in an SFHA must have some coverage.

Example: Lender makes a loan in the principal amount of $150,000 secured by five nonresidential buildings, only three of which are located in SFHAs within participating communities.

- Outstanding loan principal is $150,000.
- Maximum amount of insurance available under the NFIP.
  - Maximum limit available for the type of structure is $500,000 per building (nonresidential buildings); or
  - Insurable value (for each nonresidential building for which insurance is required, which is $100,000, or $300,000 total).

Amount of insurance required for the three buildings is $150,000. This amount of required flood insurance could be allocated among the three buildings in varying amounts, so long as each is covered by flood insurance.

15. If the insurable value of a building or mobile home, located in an SFHA in which flood insurance is available under the Act, securing a designated loan is less than the outstanding principal balance of the loan, must a lender require the borrower to obtain flood insurance up to the balance of the loan?

Answer: No. The Regulation provides that the amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for a particular type of property under the Act. The Regulation also provides that flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the building or mobile home is located. Since the NFIP policy does not cover land value, lenders should determine the amount of insurance necessary based on the insurable value of the improvements.

16. Can a lender require more flood insurance than the minimum required by the Regulation?

Answer: Yes. Lenders are permitted to require more flood insurance coverage than required by the Regulation. The borrower or lender may have to seek such coverage outside the NFIP. Each lender has the responsibility to tailor its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral. However, lenders should avoid creating situations where a building is ''over-insured.''

17. Can a lender allow the borrower to use the maximum deductible to reduce the cost of flood insurance?

Answer: Yes. However, it is not a sound business practice for a lender to allow the borrower to use the maximum deductible amount in every situation. A lender should determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender. A lender may not allow the borrower to use a deductible amount equal to the insurable value of the property to avoid

the mandatory purchase requirement for flood insurance.

III. Exemptions From the Mandatory Flood Insurance Requirements

18. What are the exemptions from coverage?

Answer: There are only two exemptions from the purchase requirements. The first applies to State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA. The second applies if both the original principal balance of the loan is $5,000 or less, and the original repayment term is one year or less.

IV. Flood Insurance Requirements for Construction Loans

19. Is a loan secured only by land that is located in an SFHA in which flood insurance is available under the Act and that will be developed into buildable lot(s) a designated loan that requires flood insurance?

Answer: No. A designated loan is defined as a loan secured by a building or mobile home that is located or to be located in an SFHA in which flood insurance is available under the Act. Any loan secured only by land that is located in an SFHA in which flood insurance is available is not a designated loan since it is not secured by a building or mobile home.

20. Is a loan secured or to be secured by a building in the course of construction that is located or to be located in an SFHA in which flood insurance is available under the Act a designated loan?

Answer: Yes. Therefore, a lender must always make a flood determination prior to loan origination to determine whether a building to be constructed that is security for the loan is located or will be located in an SFHA in which flood insurance is available under the Act. If so, then the loan is a designated loan and the lender must provide the requisite notice to the borrower prior to loan origination that mandatory flood insurance is required. The lender must then comply with the mandatory purchase requirement under the Act and Regulation.

21. Is a building in the course of construction that is located in an SFHA in which flood insurance is available under the Act eligible for coverage under an NFIP policy?

Answer: Yes. FEMA's *Flood Insurance Manual*, under general rules, states:

Buildings in the course of construction that have yet to be walled and roofed are eligible for coverage except when construction has been halted for more than 90 days and/or if the lowest floor used for rating purposes is below the Base Flood Elevation (BFE). Materials or supplies intended for use in such construction, alteration, or repair are not insurable unless they are contained within an enclosed building on the premises or adjacent to the premises.

FEMA, *Flood Insurance Manual* at p. GR 4 (FEMA's *Flood Insurance Manual* is updated every six months). The definition section of the *Flood Insurance Manual* defines ''start of construction'' in the case of new construction as ''either the first placement of permanent construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured (mobile) home on a foundation.'' FEMA, *Flood Insurance Manual*, at p. DEF 9. While an NFIP policy may be purchased prior to the start of construction, as a practical matter, coverage under an NFIP policy is not effective until actual construction commences or when materials or supplies intended for use in such construction, alteration, or repair are contained in an enclosed building on the premises or adjacent to the premises.

22. When must a lender require the purchase of flood insurance for a loan secured by a building in the course of construction that is located in an SFHA in which flood insurance is available?

Answer: Under the Act, as implemented by the Regulation, a lender may not make, increase, extend, or renew any loan secured by a building or a mobile home, located or to be located in an SFHA in which flood insurance is available, unless the property is covered by adequate flood insurance for the term of the loan. One way for lenders to comply with the mandatory purchase requirement for a loan secured by a building in the course of construction that is located in an SFHA is to require borrowers to have a flood insurance policy in place at the time of loan origination.

Alternatively, a lender may allow a borrower to defer the purchase of flood insurance until either a foundation slab has been poured and/or an elevation certificate has been issued or, if the building to be constructed will have its lowest floor below the Base Flood Elevation, when the building is walled and roofed.[12] However, the lender must require the borrower to have flood insurance in place before the lender disburses funds to pay for building construction (except as necessary to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials) on the property securing the loan. If the lender elects this approach and does not require flood insurance to be obtained at loan origination, then it must have adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than when the foundation slab has been poured and/or an elevation certificate has been issued.

23. Does the 30-day waiting period apply when the purchase of the flood insurance policy is deferred in connection with a construction loan?

Answer: No. The NFIP will rely on an insurance agent's representation on the application for flood insurance that the purchase of insurance has been properly deferred unless there is a loss during the first 30 days of the policy period. In that case, the NFIP will require documentation of the loan transaction, such as settlement papers, before adjusting the loss.

V. Flood Insurance Requirements for Nonresidential Buildings

24. Some borrowers have buildings with limited utility or value and, in many cases, the borrower would not replace them if lost in a flood. Is a lender required to mandate flood insurance for such buildings?

Answer: Yes. Under the Regulation, lenders must require flood insurance on real estate improvements when those improvements are part of the property securing the loan and are located in an SFHA and in a participating community.

The lender may consider ''carving out'' buildings from the security it takes on the loan. However, the lender should fully analyze the risks of this option. In particular, a lender should consider whether it would be able to market the property securing its loan in the event of foreclosure. Additionally, the lender should consider any local zoning issues or other issues that would affect its collateral.

[12] FEMA, *Mandatory Purchase of Flood Insurance Guidelines*, at 30.

25. What are a lender's requirements under the Regulation for a loan secured by multiple buildings located throughout a large geographic area where some of the buildings are located in an SFHA in which flood insurance is available and other buildings are not? What if the buildings are located in several jurisdictions or counties where some of the communities participate in the NFIP and others do not?

Answer: A lender is required to make a determination as to whether the improved real property securing the loan is in an SFHA. If secured improved real estate is located in an SFHA, but not in a participating community, no flood insurance is required, although a lender can require the purchase of flood insurance (from a private insurer) as a matter of safety and soundness. Conversely, where secured improved real estate is located in a participating community but not in an SFHA, no insurance is required. A lender must provide appropriate notice and require the purchase of flood insurance for designated loans located in an SFHA in a participating community.

VI. Flood Insurance Requirements for Residential Condominiums

26. Are residential condominiums, including multi-story condominium complexes, subject to the statutory and regulatory requirements for flood insurance?

Answer: Yes. The mandatory flood insurance purchase requirements under the Act and Regulation apply to loans secured by individual residential condominium units, including those located in multi-story condominium complexes, located in an SFHA in which flood insurance is available under the Act. The mandatory purchase requirements also apply to loans secured by other condominium property, such as loans to a developer for construction of the condominium or loans to a condominium association.

27. What is an NFIP Residential Condominium Building Association Policy (RCBAP)?

Answer: The RCBAP is a master policy for residential condominiums issued by FEMA. A residential condominium building is defined as having 75 percent or more of the building's floor area in residential use. It may be purchased only by condominium owners associations. The RCBAP covers both the common and individually owned building elements within the units, improvements within the units, and contents owned in common (if contents coverage is purchased). The maximum amount of building coverage that can be purchased under an RCBAP is either 100 percent of the replacement cost value of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less. RCBAP coverage is available only for residential condominium buildings in Regular Program communities.

28. What is the amount of flood insurance coverage that a lender must require with respect to residential condominium units, including those located in multi-story condominium complexes, to comply with the mandatory purchase requirements under the Act and the Regulation?

Answer: To comply with the Regulation, the lender must ensure that the minimum amount of flood insurance covering the condominium unit is the lesser of:

- The outstanding principal balance of the loan(s); or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
  - The maximum limit available for the residential condominium unit; or
  - The ''insurable value'' allocated to the residential condominium unit, which is the replacement cost value of the condominium building divided by the number of units.

Effective October 1, 2007, FEMA required agents to provide on the declaration page of the RCBAP the replacement cost value of the condominium building and the number of units. Lenders may rely on the replacement cost value and number of units on the RCBAP declaration page in determining insurable value unless they have reason to believe that such amounts clearly conflict with other available information. If there is a conflict, the lender should notify the borrower of the facts that cause the lender to believe there is a conflict. If the lender believes that the borrower is underinsured, it should require the purchase of a Dwelling Policy for supplemental coverage.

Assuming that the outstanding principal balance of the loan is greater than the maximum amount of coverage available under the NFIP, the lender must require a borrower whose loan is secured by a residential condominium unit to either:

- Ensure the condominium owners association has purchased an NFIP Residential Condominium Building Association Policy (RCBAP) covering either 100 percent of the insurable value (replacement cost) of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less; or
- Obtain a dwelling policy if there is no RCBAP, as explained in question and answer 29, or if the RCBAP coverage is less than 100 percent of the replacement cost value of the building or the total number of units in the condominium building times $250,000, whichever is less, as explained in question and answer 30.

Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost of $15 million and insured by an RCBAP with $12.5 million of coverage.

- Outstanding principal balance of loan is $300,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement cost value ($15 million ÷ 50 = $300,000).

The lender does not need to require additional flood insurance since the RCBAP's $250,000 per unit coverage ($12.5 million ÷ 50 = $250,000) satisfies the Regulation's mandatory flood insurance requirement. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($300,000)).

The guidance in this question and answer will apply to any loan that is made, increased, extended, or renewed after the effective date of this revised guidance. This revised guidance will not apply to any loans made prior to the effective date of this guidance until a trigger event occurs (that is, the loan is refinanced, extended, increased, or renewed) in connection with the loan. Absent a new trigger event, loans made prior to the effective date of this new guidance will be considered compliant if they complied with the Agencies' previous guidance, which stated that an RCBAP that provided 80 percent RCV coverage was sufficient.

29. What action must a lender take if there is no RCBAP coverage?

Answer: If there is no RCBAP, either because the condominium association will not obtain a policy or because individual unit owners are responsible for obtaining their own insurance, then the lender must require the individual unit owner/borrower to obtain a dwelling policy in an amount sufficient to meet the requirements outlined in Question 28.

A dwelling policy is available for condominium unit owners' purchase when there is no or inadequate RCBAP

coverage. When coverage by an RCBAP is inadequate, the dwelling policy may provide individual unit owners with supplemental building coverage to the RCBAP. The RCBAP and the dwelling policy are coordinated such that the dwelling policy purchased by the unit owner responds to shortfalls on building coverage pertaining either to improvements owned by the insured unit owner or to assessments. However, the dwelling policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

Example: The lender makes a loan in the principal amount of $175,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, there is no RCBAP.

- Outstanding principal balance of loan is $175,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement cost value ($10 million ÷ 50 = $200,000).

The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of at least $175,000, since there is no RCBAP, to satisfy the Regulation's mandatory flood insurance requirement. (This is the lesser of the outstanding principal balance ($175,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).)

30. What action must a lender take if the RCBAP coverage is insufficient to meet the Regulation's mandatory purchase requirements for a loan secured by an individual residential condominium unit?

Answer: If the lender determines that flood insurance coverage purchased under the RCBAP is insufficient to meet the Regulation's mandatory purchase requirements, then the lender should request that the individual unit owner/borrower ask the condominium association to obtain additional coverage that would be sufficient to meet the Regulation's requirements (*see* question and answer 28). If the condominium association does not obtain sufficient coverage, then the lender must require the individual unit owner/borrower to purchase a dwelling policy in an amount sufficient to meet the Regulation's flood insurance requirements. The amount of coverage under the dwelling policy required to be purchased by the individual unit owner would be the difference between the RCBAP's coverage allocated to that unit and the Regulation's mandatory flood insurance requirements (*see* question and answer 29).

Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, the RCBAP is at 80 percent of replacement cost value ($8 million or $160,000 per unit).

- Outstanding principal balance of loan is $300,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement value ($10 million ÷ 50 = $200,000).

The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of $40,000 to satisfy the Regulation's mandatory flood insurance requirement of $200,000. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).) The RCBAP fulfills only $160,000 of the Regulation's flood insurance requirement.

While the individual unit owner's purchase of a separate dwelling policy that provides for adequate flood insurance coverage under the Regulation will satisfy the Regulation's mandatory flood insurance requirements, the lender and the individual unit owner/borrower may still be exposed to additional risk of loss. Lenders are encouraged to apprise borrowers of this risk. The dwelling policy provides individual unit owners with supplemental building coverage to the RCBAP. The policies are coordinated such that the dwelling policy purchased by the unit owner responds to shortfalls on building coverage pertaining either to improvements owned by the insured unit owner or to assessments. However, the dwelling policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

The risk arises because the individual unit owner's dwelling policy may contain claim limitations that prevent the dwelling policy from covering the individual unit owner's share of the co-insurance penalty, which is triggered when the amount of insurance under the RCBAP is less than 80 percent of the building's replacement cost value at the time of loss. In addition, following a major flood loss, the insured unit owner may have to rely upon the condominium association's and other unit owners' financial ability to make the necessary repairs to common elements in the building, such as electricity, heating, plumbing, and elevators. It is incumbent on the lender to understand these limitations.

31. What must a lender do when a loan secured by a residential condominium unit is in a complex whose condominium association allows its existing RCBAP to lapse?

Answer: If a lender determines at any time during the term of a designated loan that the loan is not covered by flood insurance or is covered by such insurance in an amount less than that required under the Act and the Regulation, the lender must notify the individual unit owner/borrower of the requirement to maintain flood insurance coverage sufficient to meet the Regulation's mandatory requirements. The lender should encourage the individual unit owner/borrower to work with the condominium association to acquire a new RCBAP in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (*see* question and answer 28). Failing that, the lender must require the individual unit owner/borrower to obtain a flood insurance dwelling policy in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (*see* questions and answers 29 and 30). If the borrower/unit owner or the condominium association fails to purchase flood insurance sufficient to meet the Regulation's mandatory requirements within 45 days of the lender's notification to the individual unit owner/borrower of inadequate insurance coverage, the lender must force place the necessary flood insurance.

32. How does the RCBAP's co-insurance penalty apply in the case of residential condominiums, including those located in multi-story condominium complexes?

Answer: In the event the RCBAP's coverage on a condominium building at the time of loss is less than 80 percent of either the building's replacement cost or the maximum amount of insurance available for that building under the NFIP (whichever is less), then the loss payment, which is subject to a co-insurance penalty, is determined as follows (subject to all other relevant conditions in this policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

A. Divide the actual amount of flood insurance carried on the condominium building at the time of loss by 80 percent of either its replacement cost or the maximum amount of insurance

available for the building under the NFIP, whichever is less.

B. Multiply the amount of loss, before application of the deductible, by the figure determined in A above.

C. Subtract the deductible from the figure determined in B above.

The policy will pay the amount determined in C above, or the amount of insurance carried, whichever is less.

Example 1: (Inadequate insurance amount to avoid penalty).

Replacement value of the building: $250,000.

80% of replacement value of the building: $200,000.

Actual amount of insurance carried: $180,000.

Amount of the loss: $150,000.

Deductible: $ 500.

Step A: 180,000 ÷ 200,000 = .90 (90% of what should be carried to avoid co-insurance penalty)

Step B: 150,000 × .90 = 135,000

Step C: 135,000 − 500 = 134,500

The policy will pay no more than $134,500. The remaining $15,500 is not covered due to the co-insurance penalty ($15,000) and application of the deductible ($500). Unit owners' dwelling policies will not cover any assessment that may be imposed to cover the costs of repair that are not covered by the RCBAP.

Example 2: (Adequate insurance amount to avoid penalty).

Replacement value of the building: $250,000.

80% of replacement value of the building: $200,000.

Actual amount of insurance carried: $200,000.

Amount of the loss: $150,000.

Deductible: $ 500.

Step A: 200,000 ÷ 200,000 = 1.00 (100% of what should be carried to avoid co-insurance penalty)

Step B: 150,000 × 1.00 = 150,000

Step C: 150,000 − 500 = 149,500

In this example there is no co-insurance penalty, because the actual amount of insurance carried meets the 80 percent requirement to avoid the co-insurance penalty. The policy will pay no more than $149,500 ($150,000 amount of loss minus the $500 deductible). This example also assumes a $150,000 outstanding principal loan balance.

33. What are the major factors involved with the individual unit owner's dwelling policy's coverage limitations with respect to the condominium association's RCBAP coverage?

Answer: The following examples demonstrate how the unit owner's dwelling policy may cover in certain loss situations:

Example 1: (RCBAP insured to at least 80 percent of building replacement cost).

- If the unit owner purchases building coverage under the dwelling policy and if there is an RCBAP covering at least 80 percent of the building replacement cost value, the loss assessment coverage under the dwelling policy will pay that part of a loss that exceeds 80 percent of the association's building replacement cost allocated to that unit.
- The loss assessment coverage under the dwelling policy will not cover the association's policy deductible purchased by the condominium association.
- If building elements within units have also been damaged, the dwelling policy pays to repair building elements after the RCBAP limits that apply to the unit have been exhausted. Coverage combinations cannot exceed the total limit of $250,000 per unit.

Example 2: (RCBAP insured to less than 80 percent of building replacement cost).

- If the unit owner purchases building coverage under the dwelling policy and there is an RCBAP that was insured to less than 80 percent of the building replacement cost value at the time of loss, the loss assessment coverage cannot be used to reimburse the association for its co-insurance penalty.
- Loss assessment is available only to cover the building damages in excess of the 80-percent required amount at the time of loss. Thus, the covered damages to the condominium association building must be greater than 80 percent of the building replacement cost value at the time of loss before the loss assessment coverage under the dwelling policy becomes available. Under the dwelling policy, covered repairs to the unit, if applicable, would have priority in payment over loss assessments against the unit owner.

Example 3: (No RCBAP),

- If the unit owner purchases building coverage under the dwelling policy and there is no RCBAP, the dwelling policy covers assessments against unit owners for damages to common areas up to the dwelling policy limit.
- However, if there is damage to the building elements of the unit as well, the combined payment of unit building damages, which would apply first, and the loss assessment may not exceed the building coverage limit under the dwelling policy.

VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA

34. Is a home equity loan considered a designated loan that requires flood insurance?

Answer: Yes. A home equity loan is a designated loan, regardless of the lien priority, if the loan is secured by a building or a mobile home located in an SFHA in which flood insurance is available under the Act.

35. Does a draw against an approved line of credit secured by a building or mobile home, which is located in an SFHA in which flood insurance is available under the Act, require a flood determination under the Regulation?

Answer: No. While a line of credit secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act is a designated loan and, therefore, requires a flood determination before the loan is made, draws against an approved line do not require further determinations. However, a request made for an *increase* in an approved line of credit may require a new determination, depending upon whether a previous determination was done. (*See* response to question 68 in Section XIII. Required use of Standard Flood Hazard Determination Form.)

36. When a lender makes, increases, extends or renews a second mortgage secured by a building or mobile home located in an SFHA, how much flood insurance must the lender require?

Answer: The lender must ensure that adequate flood insurance is in place or require that additional flood insurance coverage be added to the flood insurance policy in the amount of the lesser of either the combined total outstanding principal balance of the first and second loan, the maximum amount available under the Act (currently $250,000 for a residential building and $500,000 for a nonresidential building), or the insurable value of the building or mobile home. The junior lienholder should also ensure that the borrower adds the junior lienholder's name as mortgagee/loss payee to the existing flood insurance policy. Given the provisions of NFIP policies, a lender cannot comply with the Act and Regulation by requiring the purchase of an NFIP flood insurance policy only in the amount of the outstanding principal balance of the second mortgage without regard to the amount of flood insurance coverage on a first mortgage.

A junior lienholder should work with the senior lienholder, the borrower, or with both of these parties, to determine how much flood insurance is needed to cover improved real estate collateral. A junior lienholder should obtain the borrower's consent in the loan agreement or otherwise for the junior lienholder to obtain information on balance and existing flood insurance coverage on senior lien loans from the senior lienholder.

Junior lienholders also have the option of pulling a borrower's credit report and using the information from that document to establish how much flood insurance is necessary upon increasing, extending or renewing a junior lien, thus protecting the interests of the junior lienholder, the senior lienholders, and the borrower. In the limited situation where a junior lienholder or its servicer is unable to

obtain the necessary information about the amount of flood insurance in place on the outstanding balance of a senior lien (for example, in the context of a loan renewal), the lender may presume that the amount of insurance coverage relating to the senior lien in place at the time the junior lien was first established (provided that the amount of flood insurance relating to the senior lien was adequate at the time) continues to be sufficient.

Example 1: Lender A makes a first mortgage with a principal balance of $100,000, but improperly requires only $75,000 of flood insurance coverage, which the borrower satisfied by obtaining an NFIP policy. Lender B issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require additional flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000), its interest in the secured property would not be fully protected in the event of a flood loss because Lender A would have prior claim on $100,000 of the loss payment towards its principal balance of $100,000, while Lender B would receive only $25,000 of the loss payment toward its principal balance of $50,000.

Example 2: Lender A, who is not directly covered by the Act or Regulation, makes a first mortgage with a principal balance of $100,000 and does not require flood insurance. Lender B, who is directly covered by the Act and Regulation, issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000) through an NFIP policy, then its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire $50,000 loss payment towards its principal balance of $100,000.

Example 3: Lender A made a first mortgage with a principal balance of $100,000 on improved real estate with a fair market value of $150,000. The insurable value of the residential building on the improved real estate is $90,000; however, Lender A improperly required only $70,000 of flood insurance coverage, which the borrower satisfied by purchasing an NFIP policy. Lender B later takes a second mortgage on the property with a principal balance of $10,000. Lender B must ensure that flood insurance in the amount of $90,000 (the insurable value) is purchased and maintained on the secured property to comply with the Act and Regulation. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($10,000), its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire $70,000 loss payment towards the insurable value of $90,000.

37. If a borrower requesting a loan secured by a junior lien provides evidence that flood insurance coverage is in place, does the lender have to make a new determination? Does the lender have to adjust the insurance coverage?

Answer: It depends. Assuming the requirements in Section 528 of the Act (42 U.S.C. 4104b) are met and the same lender made the first mortgage, then a new determination may not be necessary, when the existing determination is not more than seven years old, there have been no map changes, and the determination was recorded on an SFHDF. If, however, a lender other than the one that made the first mortgage loan is making the junior lien loan, a new determination would be required because this lender would be deemed to be ''making'' a new loan. In either situation, the lender will need to determine whether the amount of insurance in force is sufficient to cover the lesser of the combined outstanding principal balance of all loans (including the junior lien loan), the insurable value, or the maximum amount of coverage available on the improved real estate. This will hold true whether the subordinate lien loan is a home equity loan or some other type of junior lien loan.

38. If the loan request is to finance inventory stored in a building located within an SFHA, but the building is not security for the loan, is flood insurance required?

Answer: No. The Act and the Regulation provide that a lender shall not make, increase, extend, or renew a designated loan, that is a loan secured by a building or mobile home located or to be located in an SFHA, ''unless the building or mobile home and any personal property securing such loan'' is covered by flood insurance for the term of the loan. In this example, the collateral is not the type that could secure a designated loan because it does not include a building or mobile home; rather, the collateral is the inventory alone.

39. Is flood insurance required if a building and its contents both secure a loan, and the building is located in an SFHA in which flood insurance is available?

Answer: Yes. Flood insurance is required for the building located in the SFHA and any contents stored in that building.

Example: Lender A makes a loan for $200,000 that is secured by a warehouse with an insurable value of $150,000 and inventory in the warehouse worth $100,000. The Act and Regulation require that flood insurance coverage be obtained for the lesser of the outstanding principal balance of the loan or the maximum amount of flood insurance that is available under the NFIP. The maximum amount of insurance that is available for both building and contents is $500,000 for each category. In this situation, Federal flood insurance requirements could be satisfied by placing $150,000 worth of flood insurance coverage on the warehouse, thus insuring it to its insurable value, and $50,000 worth of contents flood insurance coverage on the inventory, thus providing total coverage in the amount of the outstanding principal balance of the loan. Note that this holds true even though the inventory is worth $200,000.

40. If a loan is secured by Building A, which is located in an SFHA, and contents, which are located in Building B, is flood insurance required on the contents securing a loan?

Answer: No. If collateral securing the loan is stored in Building B, which does not secure the loan, then flood insurance is not required on those contents whether or not Building B is located in an SFHA.

41. Does the Regulation apply where the lender takes a security interest in a building or mobile home located in an SFHA only as an ''abundance of caution''?

Answer: Yes. The Act and Regulation look to the collateral securing the loan. If the lender takes a security interest in improved real estate located in an SFHA, then flood insurance is required.

42. If a borrower offers a note on a single-family dwelling as collateral for a loan but the lender does not take a security interest in the dwelling itself, is this a designated loan that requires flood insurance?

Answer: No. A designated loan is a loan secured by a building or mobile home. In this example, the lender did not take a security interest in the building; therefore, the loan is not a designated loan.

43. If a lender makes a loan that is not secured by real estate, but is made on the condition of a personal guarantee by a third party who gives the lender a security interest in improved real estate owned by the third party that is located in an SFHA in which flood insurance is available, is it a designated loan that requires flood insurance?

Answer: Yes. The making of a loan on condition of a personal guarantee by a third party and further secured by improved real estate, which is located in

an SFHA, owned by that third party is so closely tied to the making of the loan that it is considered a designated loan that requires flood insurance.

VIII. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or Its Servicing Rights

44. How do the flood insurance requirements under the Regulation apply to regulated lenders under the following scenarios involving loan servicing?

Scenario 1: A regulated lender originates a designated loan secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The regulated lender makes the initial flood determination, provides the borrower with appropriate notice, and flood insurance is obtained. The regulated lender initially services the loan; however, the regulated lender subsequently sells both the loan and the servicing rights to a nonregulated party. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements under the Regulation if it only transfers or sells the servicing rights, but retains ownership of the loan?

Answer: The regulated lender must comply with all requirements of the Regulation, including making the initial flood determination, providing appropriate notice to the borrower, and ensuring that the proper amount of insurance is obtained. In the event the regulated lender sells or transfers the loan and servicing rights, the regulated lender must provide notice of the identity of the new servicer to FEMA or its designee. Once the regulated lender has sold the loan and the servicing rights, the lender has no further obligation regarding flood insurance on the loan.

If the regulated lender retains ownership of the loan and only transfers or sells the servicing rights to a nonregulated party, the regulated lender must notify FEMA or its designee of the identity of the new servicer. The servicing contract should require the servicer to comply with all the requirements that are imposed on the regulated lender as owner of the loan, including escrow of insurance premiums and force placement of insurance, if necessary.

Generally, the Regulation does not impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. Loan servicers are covered by the escrow, force placement, and flood hazard determination fee provisions of the Act and Regulation primarily so that they may perform the administrative tasks for the regulated lender, without fear of liability to the borrower for the imposition of unauthorized charges. It is the Agencies' longstanding position, as described in the preamble to the Regulation that the obligation of a loan servicer to fulfill administrative duties with respect to the flood insurance requirements arises from the contractual relationship between the loan servicer and the regulated lender or from other commonly accepted standards for performance of servicing obligations. The regulated lender remains ultimately liable for fulfillment of those responsibilities, and must take adequate steps to ensure that the loan servicer will maintain compliance with the flood insurance requirements.

Scenario 2: A nonregulated lender originates a designated loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The nonregulated lender does not make an initial flood determination or notify the borrower of the need to obtain insurance. The nonregulated lender sells the loan and servicing rights to a regulated lender. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements if it only purchases the servicing rights?

Answer: A regulated lender's purchase of a loan and servicing rights, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, is not an event that triggers any requirements under the Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance. The Regulation's requirements are triggered when a regulated lender makes, increases, extends, or renews a designated loan. A regulated lender's purchase of a loan does not fall within any of those categories. However, if a regulated lender becomes aware at any point during the life of a designated loan that flood insurance is required, then the regulated lender must comply with the Regulation, including force placing insurance, if necessary. Depending upon the circumstances, safety and soundness considerations may sometimes necessitate that the lender undertake sufficient due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance. If the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Act and Regulation.

Where a regulated lender purchases only the servicing rights to a loan originated by a nonregulated lender, the regulated lender is obligated only to follow the terms of its servicing contract with the owner of the loan. In the event the regulated lender subsequently sells or transfers the servicing rights on that loan, the regulated lender must notify FEMA or its designee of the identity of the new servicer, if required to do so by the servicing contract with the owner of the loan.

45. When a regulated lender makes a designated loan and will be servicing that loan, what are the requirements for notifying the Director of FEMA or the Director's designee?

Answer: FEMA stated in a June 4, 1996, letter that the Director's designee is the insurance company issuing the flood insurance policy. The borrower's purchase of a policy (or the regulated lender's force placement of a policy) will constitute notice to FEMA when the regulated lender is servicing that loan.

In the event the servicing is subsequently transferred to a new servicer, the regulated lender must provide notice to the insurance company of the identity of the new servicer no later than 60 days after the effective date of such a change.

46. Would a RESPA Notice of Transfer sent to the Director of FEMA (or the Director's designee) satisfy the regulatory provisions of the Act?

Answer: Yes. The delivery of a copy of the Notice of Transfer or any other form of notice is sufficient if the sender includes, on or with the notice, the following information that FEMA has indicated is needed by its designee:

- Borrower's full name;
- Flood insurance policy number;
- Property address (including city and State);
- Name of lender or servicer making notification;
- Name and address of new servicer; and
- Name and telephone number of contact person at new servicer.

47. Can delivery of the notice be made electronically, including batch transmissions?

Answer: Yes. The Regulation specifically permits transmission by electronic means. A timely batch transmission of the notice would also be permissible, if it is acceptable to the Director's designee.

48. If the loan and its servicing rights are sold by the regulated lender, is the regulated lender required to provide notice to the Director or the Director's designee?

Answer: Yes. Failure to provide such notice would defeat the purpose of the notice requirement because FEMA would have no record of the identity of either the owner or servicer of the loan.

49. Is a regulated lender required to provide notice when the servicer, not the regulated lender, sells or transfers the servicing rights to another servicer?

Answer: No. After servicing rights are sold or transferred, subsequent notification obligations are the responsibility of the new servicer. The obligation of the regulated lender to notify the Director or the Director's designee of the identity of the servicer transfers to the new servicer. The duty to notify the Director or the Director's designee of any subsequent sale or transfer of the servicing rights and responsibilities belongs to that servicer. For example, a financial institution makes and services the loan. It then sells the loan in the secondary market and also sells the servicing rights to a mortgage company. The financial institution notifies the Director's designee of the identity of the new servicer and the other information requested by FEMA so that flood insurance transactions can be properly administered by the Director's designee. If the mortgage company later sells the servicing rights to another firm, the mortgage company, not the financial institution, is responsible for notifying the Director's designee of the identity of the new servicer.

50. In the event of a merger or acquisition of one lending institution with another, what are the responsibilities of the parties for notifying the Director's designee?

Answer: If an institution is acquired by or merges with another institution, the duty to provide notice for the loans being serviced by the acquired institution will fall to the successor institution in the event that notification is not provided by the acquired institution prior to the effective date of the acquisition or merger.

IX. Escrow Requirements

51. Are multi-family buildings or mixed-use properties included in the definition of ''residential improved real estate'' under the Regulation for which escrows are required?

Answer: ''Residential improved real estate'' is defined under the Regulation as ''real estate upon which a home or other residential building is located or to be located.'' A loan secured by residential improved real estate located or to be located in an SFHA in which flood insurance is available is a designated loan. Lenders are required to escrow flood insurance premiums and fees for mandatory flood insurance for such loans if the lender requires the escrow of taxes, hazard insurance premiums or any other charges for loans secured by residential improved real estate. A lender is not required to escrow flood insurance premiums and fees for a particular loan if it does not require escrowing of any other charges for that loan.

Multi-family buildings. For the purposes of the Act and the Regulation, the definition of residential improved real estate does not make a distinction between whether a building is single- or multi-family, or whether a building is owner- or renter-occupied. Single-family dwellings (including mobile homes), two-to-four family dwellings, and multi-family properties containing five or more residential units are covered under the Act's escrow provisions. If the building securing the loan meets the Regulation's definition of residential improved real estate and the lender requires the escrow of any other charges such as taxes or hazard insurance premiums, then the lender is required to also escrow premiums and fees for flood insurance.

Mixed-use properties. The lender should look to the primary use of a building to determine whether it meets the definition of ''residential improved real estate.'' (*See* questions and answers 11 and 12 for guidance on residential and nonresidential buildings.) If the primary use of a mixed-use property is for residential purposes, the Regulation's escrow requirements apply.

52. When must escrow accounts be established for flood insurance purposes?

Answer: If a lender requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home, the lender must also require the escrow of all flood insurance premiums and fees. When administering loans secured by one-to-four family dwellings, lenders should look to the definition of ''Federally related mortgage loan'' contained in the Real Estate Settlement Procedures Act (RESPA) to see whether a particular loan is subject to the escrow requirements in Section 10 of RESPA. (This includes individual units of condominiums. Individual units of cooperatives, although covered by Section 10 of RESPA, are not insurable under the NFIP and are not covered by the Regulation.) Loans on multi-family dwellings with five or more units are not covered by RESPA requirements. Pursuant to the Regulation, however, lenders must escrow premiums and fees for any required flood insurance if the lender requires escrows for other purposes, such as hazard insurance or taxes.

53. Do voluntary escrow accounts established at the request of the borrower trigger a requirement for the lender to escrow premiums for required flood insurance?

Answer: No. If escrow accounts for other purposes are established at the voluntary request of the borrower, the lender is not required to establish escrow accounts for flood insurance premiums. Examiners should review the loan policies of the lender and the underlying legal obligation between the parties to the loan to determine whether the accounts are, in fact, voluntary. For example, when a lender's loan policies require borrowers to establish escrow accounts for other purposes and the contractual obligation permits the lender to establish escrow accounts for those other purposes, the lender will have the burden of demonstrating that an existing escrow was made pursuant to a voluntary request by the borrower.

54. Will premiums paid for credit life insurance, disability insurance, or similar insurance programs be viewed as escrow accounts requiring the escrow of flood insurance premiums?

Answer: No. Premiums paid for these types of insurance policies will not trigger the escrow requirement for flood insurance premiums.

55. Will escrow-type accounts for commercial loans, secured by multi-family residential buildings, trigger the escrow requirement for flood insurance premiums?

Answer: It depends. Escrow-type accounts established in connection with the underlying agreement between the buyer and seller, or that relate to the commercial venture itself, such as ''interest reserve accounts,'' ''compensating balance accounts,'' ''marketing accounts,'' and similar accounts are not the type of accounts that constitute escrow accounts for the purpose of the Regulation. However, escrow accounts established for the protection of the property, such as escrows for hazard insurance premiums or local real estate taxes, are the types of escrow accounts that trigger the

requirement to escrow flood insurance premiums.

56. Which requirements for escrow accounts apply to properties adequately covered by RCBAPs?

Answer: RCBAPs (Residential Condominium Building Association Policies) are policies purchased by the condominium association on behalf of itself and the individual unit owners in the condominium. A portion of the periodic dues paid to the association by the condominium owners applies to the premiums on the policy. When a lender makes, increases, renews, or extends a loan secured by a condominium unit that is adequately covered by an RCBAP and dues to the condominium association apply to the RCBAP premiums, an escrow account is not required. However, if the RCBAP coverage is inadequate and the unit is also covered by a dwelling form policy, premiums for the dwelling form policy would need to be escrowed if the lender requires escrow for other purposes, such as hazard insurance or taxes. Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

X. Force Placement of Flood Insurance

57. What is the requirement for the force placement of flood insurance under the Act and Regulation?

Answer: The Act and Regulation require a lender to force place flood insurance, if all of the following circumstances occur:

- The lender determines at any time during the life of the loan that the property securing the loan is located in an SFHA;
- Flood insurance under the Act is available for improved property securing the loan;
- The lender determines that flood insurance coverage is inadequate or does not exist; and
- After required notice, the borrower fails to purchase the appropriate amount of coverage.

The Act and Regulation require the lender, or its servicer, to send notice to the borrower upon making a determination that the improved real estate collateral's insurance coverage has expired or is less than the amount required for that particular property, such as upon receipt of the notice of cancellation or expiration from the insurance provider. The notice to the borrower must also state that if the borrower does not obtain the insurance within the 45-day period, the lender will purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees to obtain the coverage. The Act does not permit a lender or its servicer to send the required 45-day notice to the borrower prior to making a determination that flood insurance coverage is inadequate. If adequate insurance is not obtained by the borrower within the 45-day notice period, then the lender must purchase insurance on the borrower's behalf. Standard Fannie Mae/Freddie Mac documents permit the servicer or lender to add those charges to the principal amount of the loan.

FEMA developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with force placement procedures. FEMA published these procedures in the **Federal Register** on August 29, 1995 (60 FR 44881). Appendix A of FEMA's September 2007 *Mandatory Purchase of Flood Insurance Guidelines* sets out the MPPP Guidelines and Requirements, including force placement procedures and examples of notification letters to be used in connection with the MPPP.

58. Can a servicer force place on behalf of a lender?

Answer: Yes. Assuming the statutory prerequisites for force placement are met, and subject to the servicing contract between the lender and the servicer, the Act clearly authorizes servicers to force place flood insurance on behalf of the lender, following the procedures set forth in the Regulation.

59. When force placement occurs, what is the amount of insurance required to be placed?

Answer: The amount of flood insurance coverage required is the same regardless of how the insurance is placed. (*See* Section II. Determining the appropriate amount of flood insurance required under the Act and Regulation and also Section VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA.)

60. Can the 45-day notice period be accelerated by sending notice to the borrower prior to the actual date of expiration of flood insurance coverage?

Answer: [Reserved]

61. Is a reasonable period of time allowed after the end of the 45-day notice period for a lender or its servicer to implement force placement?

Answer: [*Reserved*]

62. Does a lender or its servicer have the authority to charge a borrower for the cost of insurance coverage during the 45-day notice period?

Answer: [Reserved]

XI. Private Insurance Policies

63. May a lender rely on a private insurance policy to meet its obligation to ensure that its designated loans are covered by an adequate amount of flood insurance?

Answer: It depends. A private insurance policy may be an adequate substitute for NFIP insurance if it meets the criteria set forth by FEMA in its *Mandatory Purchase of Flood Insurance Guidelines.* Similarly, a private insurance policy may be used to supplement NFIP insurance for designated loans where the property is underinsured if it meets the criteria set forth by FEMA in its *Mandatory Purchase of Flood Insurance Guidelines.* FEMA states that, to the extent that a private policy differs from the NFIP Standard Flood Insurance Policy, the differences should be carefully examined before the policy is accepted as sufficient protection under the law. FEMA also states that the suitability of private policies need only be considered when the mandatory purchase requirement applies.

64. When may a lender rely on a private insurance policy that does not meet the criteria set forth by FEMA?

Answer: A lender may rely on a private insurance policy that does not meet the criteria set forth by FEMA only in limited circumstances. For example, when a flood insurance policy has expired and the borrower has failed to renew coverage, private insurance policies that do not meet the criteria set forth by FEMA, such as private insurance policies providing portfolio-wide blanket coverage, may be useful protection for the lender for a gap in coverage in the period of time before a force placed policy takes effect. However, the lender must still force place adequate coverage in a timely manner, as required, and may not rely on a private insurance policy that does not meet the criteria set forth by FEMA on an ongoing basis.

XII. Required Use of Standard Flood Hazard Determination Form (SFHDF)

65. Does the SFHDF replace the borrower notification form?

Answer: No. The SFHDF is used by the lender to determine whether the building or mobile home offered as collateral security for a loan is or will be located in an SFHA in which flood

insurance is available under the Act. The notification form, on the other hand, is used to notify the borrower(s) that the building or mobile home is or will be located in an SFHA and to inform them about flood insurance requirements and the availability of Federal disaster relief assistance.

66. May a lender provide the SFHDF to the borrower?

Answer: Yes. While not a statutory requirement, a lender may provide a copy of the flood determination to the borrower so the borrower can provide it to the insurance agent in order to minimize flood zone discrepancies between the lender's determination and the borrower's policy. A lender would also need to make the determination available to the borrower in case of a special flood hazard determination review, which must be requested jointly by the lender and the borrower. In the event a lender provides the SFHDF to the borrower, the signature of the borrower is not required to acknowledge receipt of the form.

67. May the SFHDF be used in electronic format?

Answer: Yes. In the final rule adopting the SFHDF, FEMA stated: ''If an electronic format is used, the format and exact layout of the Standard Flood Hazard Determination Form is not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the form.'' It should be noted, however, that the lender must be able to reproduce the form upon receiving a document request by its Federal supervisory agency.

68. May a lender rely on a previous determination for a refinancing or assumption of a loan or multiple loans to the same borrower secured by the same property?

Answer: It depends. Section 528 of the Act, 42 U.S.C. 4104b(e), permits a lender to rely on a previous flood determination using the SFHDF when it is increasing, extending, renewing, or purchasing a loan secured by a building or a mobile home. Under the Act, the ''making'' of a loan is not listed as a permissible event that permits a lender to rely on a previous determination. When the loan involves a refinancing or assumption by the same lender who obtained the original flood determination on the same property, the lender may rely on the previous determination only if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made. A loan refinancing or assumption made by a lender different from the one who obtained the original determination constitutes a new loan, thereby requiring a new determination. Further, if the same lender makes multiple loans to the same borrower secured by the same improved real estate, the lender may rely on its previous determination if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made.

XIII. Flood Determination Fees

69. When can lenders or servicers charge the borrower a fee for making a determination?

Answer: There are four instances under the Act and Regulation when the borrower can be charged a specific fee for a flood determination:

- When the determination is made in connection with the making, increasing, extending, or renewing of a loan that is initiated by the borrower;
- When the determination is prompted by a revision or updating by FEMA of floodplain areas or flood-risk zones;
- When the determination is prompted by FEMA's publication of notices or compendia that affect the area in which the security property is located; or
- When the determination results in force placement of insurance.

Loan or other contractual documents between the parties may also permit the imposition of fees.

70. May charges made for life-of-loan reviews by flood determination firms be passed along to the borrower?

Answer: Yes. In addition to the initial determination at the time a loan is made, increased, renewed, or extended, many flood determination firms provide a service to the lender to review and report changes in the flood status of a dwelling for the entire term of the loan. The fee charged for the service at loan closing is a composite one for conducting both the original and subsequent reviews. Charging a fee for the original determination is clearly within the permissible purpose envisioned by the Act. The Agencies agree that a determination fee may include, among other things, reasonable fees for a lender, servicer, or third party to monitor the flood hazard status of property securing a loan in order to make determinations on an ongoing basis.

However, the life-of-loan fee is based on the authority to charge a determination fee and, therefore, the monitoring fee may be charged only if the events specified in the answer to Question 69 occur. Further, a lender may not charge a composite determination and life-of-loan fee if the loan does not close, because the life-of-loan fee would be an unearned fee in violation of the Real Estate Settlement Procedures Act.

XIV. Flood Zone Discrepancies

71. What should a lender do when there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?

A lender should only be concerned about a discrepancy on the Standard Flood Hazard Determination Form (the SFHDF) and the one on the flood insurance policy if the discrepancy is between a high-risk zone (A or V) and a low- or moderate-risk zone (B, C, D, or X). In other words, a lender need not be concerned about subcategory differences between flood zones on these two documents. Once in possession of a copy of the flood insurance policy, a lender should systematically compare the flood zone designation on the policy with the zone shown on the SFHDF. If the flood insurance policy shows a lower risk zone than the SFHDF, then lender should investigate. As noted in FEMA's *Mandatory Purchase of Flood Insurance Guidelines,* Federal law sets the ultimate responsibility to place flood insurance on the lender, with limited reliance permitted on third parties to the extent that the information that those third parties provide is guaranteed.

A lender should first determine whether the difference results from the application of the NFIP's ''Grandfather Rule.'' This rule provides for the continued use of a rating on an insured property when the initial flood insurance policy was issued prior to changes in the hazard rating for the particular flood zone where the property is located. The Grandfather Rule allows policyholders who have maintained continuous coverage and/or who have built in compliance with the Flood Insurance Rate Map to continue to benefit from the prior, more favorable

rating for particular pieces of improved property. A discrepancy resulting from application of the NFIP's Grandfather Rule is reasonable and acceptable, but the lender should substantiate these findings.

A lender should also determine whether a difference in flood zone designations is the result of a mistake. To do so, a lender should facilitate communication between itself or the third-party service provider that performed the flood hazard determination for the lender. If it appears that the discrepancy is the result of a mistake, a lender should recheck its determination. If there still appears to be a discrepancy after this step has been taken, a lender and borrower may jointly request that FEMA review the determination to confirm or review the accuracy of the original determination performed by a lender or on the lender's behalf. However, FEMA will only conduct this review if the request is submitted within 45 days of the date the lender notified the borrower that a building or manufactured home is in an SFHA and flood insurance is required.

If, despite these efforts, the discrepancy is not resolved, or in the course of attempting to resolve a discrepancy, a borrower or an insurance company or its agent is uncooperative in assisting a lender in this attempt, the lender should notify the insurance agent about the insurer's duty pursuant to FEMA's letter of April 16, 2008 (W–08021), to write a flood insurance policy that covers the most hazardous flood zone. When providing this notification, the lender should include its zone information and it should also notify the insurance company itself. The lender should substantiate these communications in its loan file.

72. Can a lender be found in violation of the requirements of the Regulation if, despite the lender's diligence in making the flood hazard determination, notifying the borrower of the risk of flood and the need to obtain flood insurance, and requiring mandatory flood insurance, there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?

Answer: As noted in question and answer 71 above, lenders should have a process in place to identify and resolve flood zone discrepancies. A lender is in the best position to coordinate between the various parties involved in a mortgage loan transaction to resolve any flood zone discrepancy. If a lender is able to substantiate in its loan file a *bona fide* effort to resolve a discrepancy, either by finding a legitimate reason for such discrepancy or by attempting to resolve the discrepancy, for example, by contacting FEMA to review the determination, no violation will be cited. If a pattern or practice of unresolved discrepancies is found in a lender's loan portfolio due to a lack of effort on the lender's part to resolve such discrepancies, the Agencies may cite the lender for a violation of the mandatory purchase requirements.

XV. Notice of Special Flood Hazards and Availability of Federal Disaster Relief

73. Does the notice have to be provided to each borrower for a real estate related loan?

Answer: No. In a transaction involving multiple borrowers, the lender need only provide the notice to any one of the borrowers in the transaction. Lenders may provide multiple notices if they choose. The lender and borrower(s) typically designate the borrower to whom the notice will be provided. The notice must be provided to a borrower when the lender determines that the property securing the loan is or will be located in an SFHA.

74. Lenders making loans on mobile homes may not always know where the home is to be located until just prior to, or sometimes after, the time of loan closing. How is the notice requirement applied in these situations?

Answer: When it is not reasonably feasible to give notice before the completion of the transaction, the notice requirement can be met by lenders in mobile home loan transactions if notice is provided to the borrower as soon as practicable after determination that the mobile home will be located in an SFHA. Whenever time constraints can be anticipated, regulated lenders should use their best efforts to provide adequate notice of flood hazards to borrowers at the earliest possible time. In the case of loan transactions secured by mobile homes not located on a permanent foundation, the Agencies note that such ''home only'' transactions are excluded from the definition of mobile home and the notice requirements would not apply to these transactions.

However, as indicated in the preamble to the Regulation, the Agencies encourage a lender to advise the borrower that if the mobile home is later located on a permanent foundation in an SFHA, flood insurance will be required. If the lender, when notified of the location of the mobile home subsequent to the loan closing, determines that it has been placed on a permanent foundation and is located in an SFHA in which flood insurance is available under the Act, flood insurance coverage becomes mandatory and appropriate notice must be given to the borrower under those provisions. If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force place the insurance.

75. When is the lender required to provide notice to the servicer of a loan that flood insurance is required?

Answer: Because the servicer of a loan is often not identified prior to the closing of a loan, the Regulation requires that notice be provided no later than the time the lender transmits other loan data, such as information concerning hazard insurance and taxes, to the servicer.

76. What will constitute appropriate form of notice to the servicer?

Answer: Delivery to the servicer of a copy of the notice given to the borrower is appropriate notice. The Regulation also provides that the notice can be made either electronically or by a written copy.

77. In the case of a servicer affiliated with the lender, is it necessary to provide the notice?

Answer: Yes. The Act requires the lender to notify the servicer of special flood hazards and the Regulation reflects this requirement. Neither contains an exception for affiliates.

78. How long does the lender have to maintain the record of receipt by the borrower of the notice?

Answer: The record of receipt provided by the borrower must be maintained for the time that the lender owns the loan. Lenders may keep the record in the form that best suits the lender's business practices. Lenders may retain the record electronically, but they must be able to retrieve the record within a reasonable time pursuant to a document request from their Federal supervisory agency.

79. Can a lender rely on a previous notice if it is less than seven years old, and it is the same property, same borrower, and same lender?

Answer: No. The preamble to the Regulation states that subsequent transactions by the same lender with respect to the same property will be treated as a renewal and will require no new determination. However, neither the Regulation nor the preamble addresses waiving the requirement to provide the notice to the borrower.

Therefore, the lender must provide a new notice to the borrower, even if a new determination is not required.

80. Is use of the sample form of notice mandatory?

Answer: No. Although lenders are required to provide a notice to a borrower when it makes, increases, extends, or renews a loan secured by an improved structure located in an SFHA, use of the sample form of notice provided in Appendix A of the Regulation or in Appendix 4 of FEMA's *Mandatory Purchase of Flood Insurance Guidelines* is not mandatory. It should be noted that the sample form includes other information in addition to what is required by the Act and the Regulation. Lenders may personalize, change the format of, and add information to the sample form of notice, if they choose. However, a lender-revised notice must provide the borrower with at least the minimum information required by the Act and Regulation. Therefore, lenders should consult the Act and Regulation to determine the information needed.

XVI. Mandatory Civil Money Penalties

81. Which violations of the Act can result in a mandatory civil money penalty?

Answer: A pattern or practice of violations of any of the following requirements of the Act and their implementing Regulation triggers a mandatory civil money penalty:

- Purchase of flood insurance where available (42 U.S.C. 4012a(b));
- Escrow of flood insurance premiums (42 U.S.C. 4012a(d));
- Force placement of flood insurance (42 U.S.C. 4012a(e));
- Notice of special flood hazards and the availability of Federal disaster relief assistance (42 U.S.C. 4104a(a)); and
- Notice of servicer and any change of servicer (42 U.S.C. 4101a(b)).

The Act states that any regulated lending institution found to have a pattern or practice of certain violations ''shall be assessed a civil penalty'' by its Federal supervisor in an amount not to exceed $350 per violation, with a ceiling per institution of $100,000 during any calendar year (42 U.S.C. 4012a(f)(5)). Each Agency adjusts these limits pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 note.[13] Lenders pay the penalties into the National Flood Mitigation Fund held by the Department of the Treasury for the benefit of FEMA.

82. What constitutes a ''pattern or practice'' of violations for which civil money penalties must be imposed under the Act?

Answer: The Act does not define ''pattern or practice.'' The Agencies make a determination of whether a pattern or practice exists by weighing the individual facts and circumstances of each case. In making the determination, the Agencies look both to guidance and experience with determinations of pattern or practice under other regulations (such as Regulation B (Equal Credit Opportunity) and Regulation Z (Truth in Lending)), as well as Agencies' precedents in assessing civil money penalties for flood insurance violations.

The *Policy Statement on Discrimination in Lending* (Policy Statement) provided the following guidance on what constitutes a pattern or practice:

> Isolated, unrelated, or accidental occurrences will not constitute a pattern or practice. However, repeated, intentional, regular, usual, deliberate, or institutionalized practices will almost always constitute a pattern or practice. The totality of the circumstances must be considered when assessing whether a pattern or practice is present.

In determining whether a financial institution has engaged in a pattern or practice of flood insurance violations, the Agencies' considerations may include, but are not limited to, the presence of one or more of the following factors:

- Whether the conduct resulted from a common cause or source within the financial institution's control;
- Whether the conduct appears to be grounded in a written or unwritten policy or established practice;
- Whether the noncompliance occurred over an extended period of time;
- The relationship of the instances of noncompliance to one another (for example, whether the instances of noncompliance occurred in the same area of a financial institution's operations);
- Whether the number of instances of noncompliance is significant relative to the total number of applicable transactions. (Depending on the circumstances, however, violations that involve only a small percentage of an institution's total activity could constitute a pattern or practice);
- Whether a financial institution was cited for violations of the Act and Regulation at prior examinations and the steps taken by the financial institution to correct the identified deficiencies;
- Whether a financial institution's internal and/or external audit process had not identified and addressed deficiencies in its flood insurance compliance; and
- Whether the financial institution lacks generally effective flood insurance compliance policies and procedures and/or a training program for its employees.

Although these guidelines and considerations are not dispositive of a final resolution, they do serve as a reference point in assessing whether there may be a pattern or practice of violations of the Act and Regulation in a particular case. As previously stated, the presence or absence of one or more of these considerations may not eliminate a finding that a pattern or practice exists.

End of text of the Interagency Questions and Answers Regarding Flood Insurance.

Dated: May 15, 2009.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 14, 2009.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 8th day of July, 2009.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

Dated: April 2, 2009.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

Date: July 8, 2009

Roland E. Smith,

Secretary, Farm Credit Administration Board.

By the National Credit Union Administration Board, on June 5, 2009.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E9–17129 Filed 7–20–09; 8:45 am]

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[13] Please refer to 12 CFR 19.240(a) (OCC); 12 CFR 263.65(b)(10) (Board); 12 CFR 308.132(c)(xvi) (FDIC); 12 CFR 509.103(c) (OTS); 12 CFR 622.61(b) (FCA); and 12 CFR 747.1001(a) (NCUA) for the Agencies' current civil penalty limits.

Federal Register

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July 21, 2009

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Parts 229, 234, 235 et al.

Positive Train Control Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229, 234, 235, and 236

[Docket No. FRA–2008–0132, Notice No. 1]

RIN 2130–AC03

Positive Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes regulations implementing a requirement of the Rail Safety Improvement Act of 2008 that certain passenger and freight railroads install positive train control systems. The proposal includes required functionalities of the technology and the means by which it would be certified. The proposal also describes the contents of the positive train control implementation plans required by the statute and contains the proposed process for submission of those plans for review and approval by FRA. These proposed regulations could also be voluntarily complied with by entities not mandated to install positive train control systems.

DATES: (1) Written comments must be received by August 20, 2009. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

(2) FRA will hold an oral public hearing on a date to be announced in a forthcoming notice.

ADDRESSES: Comments: Comments related to Docket No. FRA–2008–0132, may be submitted by any of the following methods:

- *Web Site:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 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.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 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.

FOR FURTHER INFORMATION CONTACT: Thomas McFarlin, Office of Safety Assurance and Compliance, Staff Director, Signal & Train Control Division, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W35–332, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202–493–6203); or Jason Schlosberg, Trial Attorney, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–217, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202–493–6032).

SUPPLEMENTARY INFORMATION: FRA is issuing this proposed rule to provide regulatory guidance and performance standards for the development, testing, implementation, and use of Positive Train Control (PTC) systems for railroads mandated by the Railroad Safety Improvement Act of 2008 section 104, Public Law 110–432, 122 Stat. 4854 (Oct. 16, 2008) (codified at 9 U.S.C. 20157) (hereinafter ''RSIA08'') to install PTC systems. These regulations may also be voluntarily complied with by entities not mandated to install PTC in lieu of the requirements contained in subpart H of part 236. The proposed rule establishes requirements for PTC system standard design and functionality, the associated submissions for FRA PTC system approval and certification, requirements for training, and required risk-based criteria. The RSIA08 mandates that widespread implementation of PTC across a major portion of the U.S. rail industry be accomplished by December 31, 2015. This proposed rule is intended to provide the necessary Federal oversight, guidance, and assistance toward successful completion of that congressional requirement. This proposed rule also necessitates or results in some minimal revision or amendment to parts 229, 234 and 235, as well as previously existing subparts A through H of part 236.

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I. Introduction

This proposed rule provides new performance standards for the implementation and operation of PTC systems as mandated by RSIA08 and as otherwise voluntarily adopted. The proposed rule also details the process and identifies the documents that railroads and operators of passenger trains are to utilize and incorporate in their PTC implementation plans required by the Railroad Safety Improvement Act of 2008 section 104, Public Law 110–432, 122 Stat. 4854, (Oct. 16, 2008) (codified at 9 U.S.C. 20157) (hereinafter ''RSIA08''). The proposal also details the process and procedure for obtaining FRA approval of such plans.

FRA began the process of developing a proposed rule after RSIA08 was signed into law. While developing the proposed rule, FRA applied the performance-based principles embodied in existing subpart H of part 236 to identify and remedy any weaknesses discovered in the subpart H regulatory approach, while exploiting lessons learned from products developed under subpart H. FRA has continued to make performance-based safety decisions while supporting railroads in their development and implementation of PTC system technologies.

Development of the proposed rule was enhanced with the participation of the Railroad Safety Advisory Committee (RSAC), which tasked a PTC Working Group to provide advice regarding development of implementing regulations for PTC systems and their deployment that are required under RSIA08. The PTC Working Group made a number of consensus recommendations, which have been

identified and included in this proposed rule. The preamble discusses the statutory background, the regulatory background, the RSAC proceedings, the alternatives considered and the rationale for the option selected, the proceedings to date, as well as the comments and conclusions on general issues. Other comments and resolutions are discussed within the corresponding section-by-section analysis.

II. Background

A. The Need for Positive Train Control Technology

Since the early 1920s, systems have been in use that can intervene in train operations by warning crews or causing trains to stop if they are not being operated safely because of inattention, misinterpretation of wayside signal indications, or incapacitation of the crew. Pursuant to orders of the Interstate Commerce Commission (ICC)—whose safety regulatory activities were later transferred to FRA when it was established in 1967—cab signal systems, automatic train control, and automatic train stop systems were deployed on a significant portion of the national rail system to supplement and enforce the indications of wayside signals and operating speed limitations. However, these systems were expensive to install and maintain, and with the decline of intercity passenger service following the Second World War, the ICC and the industry allowed many of these systems to be discontinued. During this period, railroads were heavily regulated with respect to rates and service responsibilities. The development of the Interstate Highway System and other factors led to reductions in the railroads' revenues without regulatory relief, leading to bankruptcies, railroad mergers, and eventual abandonment of many rail lines. Consequently, railroads focused on fiscal survival, and investments in expensive relay-based train control technology were economically out of reach. The removal of these train control systems, which had never been pervasively installed, permitted train collisions to continue, notwithstanding enforcement of railroad operating rules designed to prevent them.

As early as 1970, following its investigation of the August 20, 1969, head-on collision of two Penn Central Commuter trains near Darien, Connecticut, in which 4 people were killed and 45 people were injured, the National Transportation Safety Board (NTSB) asked FRA to study the feasibility of requiring a form of automatic train control system to protect against operator error and prevent train collisions. Following the Darien accident, the NTSB continued to investigate one railroad accident after another caused by human error. During the next two decades, the NTSB issued a number of safety recommendations asking for train control measures. Following its investigation of the May 7, 1986, rear-end collision involving a Boston and Maine Corporation commuter train and a Consolidated Rail Incorporated (Conrail) freight train in which 153 people were injured, the NTSB recommend that FRA promulgate standards to require the installation and operation of a train control system that would provide for positive train separation. NTSB Recommendation R–87–16 (May 19, 1987), *available at http://www.ntsb.gov/Recs/letters/1987/R87_16.pdf.* When the NTSB first established its Most Wanted List of Transportation Safety Improvements in 1990, the issue of Positive Train Separation was among the improvements listed, and it remained on the list until just after enactment of RSIA08. Original ''Most Wanted'' list of Transportation Safety Improvements, as adopted September 1990, *available at http://www.ntsb.gov/Recs/mostwanted/original_list.htm.* The NTSB continues to follow the progress of the technology's implementation closely and participated through staff in the most recent PTC Working Group deliberations.

Meanwhile, enactment of the Staggers Rail Act of 1980 signaled a shift in public policy that permitted the railroads to shed unprofitable lines, largely replace published ''tariffs'' with appropriately priced contract rates, and generally respond to marketplace realities, which increasingly demanded flexible service options responsive to customer needs. The advent of microprocessor-based electronic control systems and digital data radio technology during the mid-1980s led the freight railroad industry, through the Association of American Railroads (AAR) and the Railway Association of Canada, to explore the development of Advanced Train Control Systems (ATCS). With broad participation by suppliers, railroads, and FRA, detailed specifications were developed for a multi-level ''open'' architecture that would permit participation by many suppliers while ensuring that systems deployed on various railroads would work in harmony as trains crossed corporate boundaries. ATCS was intended to serve a variety of business purposes, in addition to enhancing the safety of train operations. Pilot versions of ATCS and a similar system known as Advanced Railroad Electronic Systems (ARES) were tested relatively successfully, but the systems were never deployed on a wide scale primarily due to cost. However, sub-elements of these systems were employed for various purposes, particularly for replacement of pole lines associated with signal systems.

Collisions, derailments, and incursions into work zones used by roadway workers continued as a result of the absence of effective enforcement systems designed to compensate for the effects of fatigue and other human factors. Renewed emphasis on rules compliance and Federal regulatory initiatives, including rules for the control of alcohol and drug use in railroad operations, operational testing and inspection programs designed to verify railroad rules compliance, requirements for qualification and certification of locomotive engineers, and negotiated rules for roadway worker protection led to some reduction in risk. However, the lack of an effective collision avoidance system allowed the continued occurrence of accidents, some involving tragic losses of life and significant property damage.

B. Earlier Efforts To Encourage Voluntary PTC Implementation

As the NTSB continued to highlight the opportunities for accident prevention associated with emerging train control technology through its investigations and findings, Congress showed increasing interest, mandating three separate reports over the period of a decade. In 1994, FRA reported to Congress on this problem, calling for implementation of an action plan to deploy PTC systems (Railroad Communications and Train Control, July 1994 (hereinafter ''1994 Report'')). The 1994 Report forecasted substantial benefits of advanced train control technology in supporting a variety of business and safety purposes, but noted that an immediate regulatory mandate for PTC could not be justified based upon normal cost-benefit principals relying on direct safety benefits. The report outlined an aggressive Action Plan implementing a public-private sector partnership to explore technology potential, deploy systems for demonstration, and structure a regulatory framework to support emerging PTC initiatives.

Following through on the 1994 Report, FRA committed approximately $40 million through the Next Generation High Speed Rail Program and the Research and Development Program to support development,

testing, and deployment of PTC prototype systems in the Pacific Northwest, Michigan, Illinois, Alaska, and some Eastern railroads. FRA also initiated a comprehensive effort to structure an appropriate regulatory framework for facilitating voluntary implementation of PTC and for evaluating future safety needs and opportunities.

In September of 1997, FRA asked the RSAC to address the issue of PTC. The RSAC accepted three tasks: Standards for New Train Control Systems (Task 1997–06), Positive Train Control Systems—Implementation Issues (Task 1997–05), and Positive Train Control Systems—Technologies, Definitions, and Capabilities (Task 1997–04). The PTC Working Group was established, comprised of representatives of labor organizations, suppliers, passenger and freight railroads, other Federal agencies, and interested state departments of transportation. The PTC Working Group was supported by FRA counsel and staff, analysts from the Volpe National Transportation Systems Center, and advisors from the NTSB staff.

In 1999, the PTC Working Group provided to the Federal Railroad Administrator a consensus report (''1999 Report'') with an indication that it would be continuing its efforts. The report defined the PTC core functions to include: Prevention of train-to-train collisions (positive train separation); enforcement of speed restrictions, including civil engineering restrictions (curves, bridges, *etc.*) and temporary slow orders; and protection for roadway workers and their equipment operating under specific authorities. The PTC Working Group identified additional safety functions that might be included in some PTC architectures: Provide warning of on-track equipment operating outside the limits of authority; receive and act upon hazard information, when available, in a more timely or more secure manner (*e.g.,* compromised bridge integrity, wayside detector data); and provide for future capability by generating data for transfer to highway users to enhance warning at highway-rail grade crossings. The PTC Working Group stressed that efforts to enhance highway-rail grade crossing safety must recognize the train's necessary right of way at grade crossings and that it is important that warning systems employed at highway-rail grade crossings be highly reliable and ''fail-safe'' in their design.

As the PTC Working Group's work continued, other collaborative efforts, including development of Passenger Equipment Safety Standards (including private standards through the American Public Transit Association), Passenger Train Emergency Preparedness rules, and proposals for improving locomotive crashworthiness (including improved fuel tank standards) have targeted reduction in collision and derailment consequences.

In 2003, in light of technological advances and potential increased cost and system savings related to prioritized deployment of PTC systems, the Appropriations Committees of Congress requested that FRA update the costs and benefits for the deployment of PTC and related systems. As requested, FRA carried out a detailed analysis that was filed in August of 2004 (''2004 Report''), which indicated that under one set of highly controversial assumptions, substantial public benefits would likely flow from the installation of PTC systems on the railroad system. Further, the total amount of these benefits was subject to considerable controversy. While many of the other findings of the 2004 Report were disputed, there were no data submitted to challenge the 2004 Report finding that reaffirmed earlier conclusions that the safety benefits of PTC systems were relatively small in comparison to the large capital and maintenance costs. Accordingly, FRA continued to believe that an immediate regulatory mandate for widespread PTC implementation could not be justified based upon traditional cost-benefit principles relying on direct railroad safety benefits. *Benefits and Costs of Positive Train Control* (Report in Response to Committees on Appropriations, August 2004).

Despite the economic infeasibility of PTC based on safety benefits alone, as outlined in the 1994, 1999, and 2004 Reports, FRA continued with regulatory and other efforts to facilitate and encourage the voluntary installation of PTC systems. As part of the High Speed Rail Initiative, and in conjunction with the National Railroad Passenger Corporation (Amtrak), the AAR, the State of Illinois, and the Union Pacific Railroad Company (UP), FRA created the North American Joint Positive Train Control (NAJPTC) Program, which set out to describe a single standardized open source PTC architecture and system. UP's line between Springfield and Mazonia, Illinois was selected for initial installation of a train control system to support Amtrak operations up to 110 mph, and the system was installed and tested on portions of that line. Although the system did not prove viable as then conceived, the project hastened the development of PTC technology that was subsequently employed in other projects. Promised standards for interoperability of PTC systems also proved elusive.

In addition to financially supporting the NAJPTC Program, FRA continued to work with the rail carriers, rail labor, and suppliers on regulatory reforms to facilitate voluntary PTC implementation. The regulatory reform effort culminated when FRA issued a final rule on March 7, 2005, establishing a technology neutral safety-based performance standard for processor-based signal and train control systems. This new regulation, codified as subpart H to part 236, was carefully crafted to encourage the voluntary implementation and operation of processor-based signal and train control systems without impairing technological development. 70 FR 11052 (Mar. 7, 2005).

FRA intended that final rule—developed in close cooperation with rail management, rail labor, and suppliers—to further facilitate individual railroad efforts to voluntarily develop and deploy cost effective PTC technologies that would make system-wide deployment more economically viable. It also appeared very possible that major railroads would elect to make voluntary investments in PTC to enhance safety, improve service quality, and foster efficiency (*e.g.,* better asset utilization, reduced fuel use through train pacing).

C. Technology Advances Under Subpart H

While FRA and RSAC worked to develop consensus on the regulations that would become subpart H, the railroads continued with PTC prototype development. The technology neutral, performance-based regulatory process established by subpart H proved to be very successful in facilitating the development of other PTC implementation approaches. Although the railroads prototype development efforts were generally technically successful and offered significant improvements in safety, costs of nationwide deployment continued to be untenable. Information gained from prototype efforts did little to reduce the estimated costs for widespread implementation of the core PTC safety functions on the nation's railroads.

Working under subpart H, the BNSF Railway Company (BNSF), CSX Transportation, Inc. (CSXT), the Norfolk Southern Corporation (NS), and UP undertook more aggressive design and implementation work. The new subpart H regulatory approach also made it feasible for smaller railroads such as the Alaska Railroad and the Ohio Central Railroad to begin voluntary design and implementation work on PTC systems

that best suited their needs. FRA provided, and continues to provide, technical assistance and guidance regarding regulatory compliance to enable the railroads to more effectively design, install, and test their respective systems.

In December 2006, FRA approved the initial version of the Electronic Train Management System (ETMS) product for deployment on 35 of BNSF's subdivisions (''ETMS I Configuration'') comprising single track territory that was either non-signaled or equipped with traffic control systems. In a separate proceeding, FRA agreed that ETMS could be installed in lieu of restoring a block signal system on a line for which discontinuance had been authorized followed by a significant increase in traffic. During the same period, BNSF successfully demonstrated a Switch Point Monitoring System (SPMS)—a system that contains devices attached to switches that electronically report the position of the switches to the railroad's central dispatching office or the crew of an approaching train—and a Track Integrity Warning System (TIWS)—a system that electronically reports to the railroad's central dispatching office or the crew of an approaching train if there are any breaks in the rail that might lead to derailments. FRA believes both of these technologies help to reduce risk in non-signaled territory and are forward-compatible for use with existing and new PTC systems. To be forward-compatible, not to be confused with the similar concept of extensibility, a system must be able to gracefully provide input intended for use in later system versions. The introduction of a forward-compatible technology implies that older devices can partly understand and provide data generated or used by new devices or systems. The concept can be applied to electrical interfaces, telecommunication signals, data communication protocols, file formats, and computer programming languages. A standard supports forward-compatibility if older product versions can receive, read, view, play, execute, or transmit data to the new standard. In the case of wayside devices, they are said to be forward compatible if they can appropriately communicate and interact with a PTC system when later installed. A wayside device might serve the function of providing only information or providing information and accepting commands from a new system.

In addition to scheduling the installation of the ETMS I configuration as capital funding became available, BNSF voluntarily undertook the design and testing of complementary versions of ETMS that would support BNSF operations on more complex track configurations, at higher allowable train speeds, and with additional types of rail traffic. Meanwhile, CSXT was in the process of redesigning and relocating the test bed for its Communications Based Train Management (CBTM) system, which it has tested for several years, and UP and NS were working on similar systems using vital onboard processing.

As congressional consideration of legislation that resulted in the RSIA08 commenced, all four major railroads had settled on the core technology developed for them by Wabtec Railway Electronics (''Wabtec''). As the legislation progressed, the railroads and Wabtec worked toward greater commonality in the basic functioning of the onboard system with a view toward interoperability. Accordingly, ETMS is now a generic architectural description of one type of PTC system. Examples of ETMS include the non-vital PTC systems of BNSF's ETMS I and ETMS II, CSXT's CBTM, UP's Vital Train Management System (VTMS), and NS's Optimized Train Control (OTC). Further work is being undertaken by BNSF to advance the capability of ETMS by integrating Amtrak operations (ETMS III). For a description of system enhancements planned by BNSF as per the Product Safety Plan filed in accordance with subpart H, see FRA Docket No. 2006–23687, Document 0017, at pp. 40–43.

While the freight railroads' efforts for developing and installing PTC systems progressed over a relatively long period of time, starting with demonstrations of ATCS and ARES in the late 1980s and culminating in the initial ETMS Product Safety Plan approval in December of 2006, Amtrak demonstrated its ability to turn on revenue-quality PTC systems on its own railroad in support of high speed rail. Beginning in the early 1990s, Amtrak developed plans for enhanced high speed service on the Northeast Corridor (NEC), which included electrification and other improvements between New Haven and Boston and introduction of the Acela trainsets as the premium service from Washington to New York and New York to Boston. In connection with these improvements, which support train speeds up to 150 mph, Amtrak undertook to install the Advanced Civil Speed Enforcement System (ACSES) as a supplement to existing cab signals and automatic train control (speed control). Together, these systems deliver PTC core functionalities. In support of this effort, FRA issued an order for the installation of the system, which required all passenger and freight operators in the New Haven-Boston segment to equip their locomotives with ACSES. *See* 63 FR 39343 (July 22, 1998). ACSES was installed between 2000 and 2002, and has functioned successfully between New Haven and Boston, and on selected high speed segments between Washington and New York for a number of years.

Amtrak voluntarily began development of an architecturally different PTC system, the Incremental Train Control System (ITCS), for installation on its Michigan Line. Amtrak developed and installed ITCS under waivers from specific sections of 49 CFR part 236, subparts A through G, granted by FRA. ITCS was applied to tenant NS locomotives as well as Amtrak locomotives traversing the route. Highway-rail grade crossings on the route were fitted with ITCS units to pre-start the warning systems for high-speed trains and to monitor crossing warning system health in real time. The ITCS was tested extensively in the field for safety and reliability, and it was placed in revenue service in 2001. As experience was gained, FRA authorized increases in speed to 95 mph; and FRA is presently awaiting final results of an independent assessment of verification and validation for the system with a view toward authorizing operations at the design speed of 110 mph.

Despite these successes, the widespread deployment of these various train control systems, particularly on the general freight system, remained very much constrained by prohibitive capital costs. While the railroads were committed to installing these new systems to enhance the safety afforded to the public and their employees, the railroad's actual widespread implementation remained forestalled due to an inability to generate sufficient funding for these new projects in excess of the capital expenditures necessary to cover the ongoing operating and maintenance costs. Accordingly, the railroads continued to plan very slow deployments of PTC system technologies.

III. The Rail Safety Improvement Act of 2008

On May 1, 2007, the House of Representatives introduced H.R. 2095, which would, among other things, mandate the implementation and use of PTC systems. The bill passed the House on October 17, 2007. The bill was then amended and passed by the Senate on August 1, 2008. While the bill was awaiting final passage, the FRA Administrator testified before Congress that ''FRA is a strong supporter of PTC

technology and is an active advocate for its continued development and deployment.'' Senate Commerce Committee Briefing on Metrolink Accident, 110th Cong. (Sept. 23, 2008) (written statement of Federal Railroad Administrator Joseph H. Boardman), *available at http://www.fra.dot.gov/downloads/PubAffairs/09-23-08FinalStatementFRAAdministratorPTC_Sen_Boxer_Meeting.pdf.*

On September 24, 2008, the House concurred with the Senate amendment and added another amendment pursuant to H. Res. 1492. When considering the House's amendment, various Senators made statements referencing certain train accidents that were believed to be PTC-preventable. For instance, Senator Lautenberg (NJ) took notice of the collision at Graniteville, South Carolina in 2005, and Senators Lautenberg, Hutchinson (TX), Boxer (CA), Levin (MI), and Carper (DE) took notice of an accident at Chatsworth, California, on September 12, 2008. According to Senator Levin, Federal investigators have said that a collision warning system could have prevented that crash and the subject legislation would require that new technology to prevent crashes be installed in high risk tracks. Senators Carper and Boxer made similar statements, indicating that PTC systems are designed to prevent train derailments and collisions, like the one in Chatsworth. 154 Cong. Rec. S10283–S10290 (2008). Ultimately, on October 1, 2008, the Senate concurred with the House amendment.

The Graniteville accident referenced by Senator Lautenberg was an early morning collision between two NS trains in non-signaled (dark) territory near the Avondale Mills Textile plant. One of the trains—which was transporting chlorine gas, sodium hydroxide, and cresol on the main track—approached an improperly lined hand-operated switch. As the train diverged through the switch, it ran onto the siding track where it collided with a parked train. Various tank cars ruptured, releasing at least 90 tons of chlorine gas. Nine people died due to chlorine inhalation and at least 250 people were treated for chlorine exposure. In addition, 5,400 residents within a mile of the crash site were forced to evacuate for nearly two weeks while hazardous materials (hazmat) teams and cleanup crews decontaminated the area.

The Chatsworth train collision occurred on the afternoon of September 12, 2008, when a Union Pacific freight train and a Metrolink commuter train collided head-on on a single main track equipped with a Traffic Control System (TCS) in the Chatsworth district of Los Angeles, California. Although NTSB has not yet released its final report, evidence summarized at the NTSB's public hearing suggested that the Metrolink passenger train was operated past a signal displaying a stop indication and entered a section of single track where the opposing UP freight train was operating on a signal indication permitting it to proceed over a switch and into a siding (after which the switch would have been lined for the Metrolink train to proceed). As a consequence of the accident, 25 people died and over 130 more were seriously injured.

Prior to the accidents in Graniteville and Chatsworth, the railroads' slow incremental deployment of PTC technologies—while not uniformly agreed upon by the railroads, FRA, and NTSB—was generally deemed acceptable by them in view of the tremendous costs involved. Partially as a consequence and severity of these very public accidents, coupled with a series of other less publicized accidents, Congress passed the Rail Safety Improvement Act of 2008 into law on October 16, 2008, marking a public policy decision that, despite the implementation costs, railroad employee and general public safety warranted mandatory and accelerated installation and operation of PTC systems.

As immediately relevant to this rulemaking, RSIA08 requires the installation and operation of PTC systems on all main lines, meaning all intercity and commuter lines—with limited exceptions entrusted to FRA—and on freight-only lines when they are part of a Class I railroad system, carrying at least 5 million gross tons of freight annually, and carrying any amount of poison- or toxic-by-inhalation (PIH or TIH) materials. While the statute vests certain responsibilities with the Secretary of the U.S. Department of Transportation, the Secretary has since delegated those responsibilities to the FRA Administrator. *See* 49 CFR 1.49(oo); 74 FR 26,981 (June 5, 2009); *see also* 49 U.S.C. 103(g).

In RSIA08, Congress established very aggressive dates for PTC system build-out completion. Each subject railroad is required to submit to FRA by April 16, 2010, an implementation plan indicating where and how it intends to install PTC systems by December 31, 2015. As a result of this accelerated PTC system deployment schedule, railroads must immediately engage in a massive reprogramming of capital funds.

In light of the timetable instituted by Congress, and to better support railroads with their installation while maintaining safety, FRA decided that it is appropriate for mandatory PTC systems to be reviewed by FRA differently than the regulatory approval process provided under subpart H. FRA believes that it is important to develop a process more suited specifically for PTC systems that would better facilitate railroad reuse of safety documentation and simplify the process of showing that the installation of the PTC system did not degrade safety. FRA also believes that subpart H does not clearly address the statutory mandates and that such lack of clarity would complicate railroad efforts to comply with the new statutory requirements. Accordingly, FRA is hereby proposing to amend part 236 by modifying existing subpart H and adding a new subpart I. FRA requests comments on whether this proposed regulation exercises the appropriate level of discretion and flexibility to comply with RSIA08 in the most cost effective and beneficial manner.

IV. RSAC

In March 1996, FRA established the RSAC, which provides a forum for collaborative rulemaking and program development. The RSAC includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendation to FRA for action on the task. These recommendations are developed by consensus. The working group may establish one or more task forces or other subgroups to develop facts and options on a particular aspect of a given task. The task force, or other subgroup, reports to the working group. If a working group comes to consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group and subgroup levels in discussing the issues and options and in drafting the language of the consensus proposal, and because the RSAC recommendation constitutes the consensus of some of the industry's

leading experts on a given subject, FRA is generally favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goals, is soundly supported, and was developed in accordance with the applicable policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal.

In developing this proposal, FRA adopted the RSAC PTC Working Group approach. As part of this effort, FRA is working with the major stakeholders affected by this subpart in as much a collaborative manner as possible. FRA believes establishing a collaborative relationship early in the product development and regulatory development cycles can help bridge the divide between the railroad carrier's management, railroad labor organizations, the suppliers, and FRA by ensuring that all stakeholders are working with the same set of data and have a common understanding of product characteristics or their related processes production methods, including the regulatory provisions, with which compliance is mandatory. However, where the group failed to reach consensus on an issue, FRA used its authority to resolve the issue, attempting to reconcile as many of the divergent positions as possible through traditional rulemaking proceedings.

On December 10, 2008, the RSAC accepted a task (No. 08–04) entitled ''Implementation of Positive Train Control Systems.'' The purpose of this task was defined as follows: ''To provide advice regarding development of implementing regulations for Positive Train Control (PTC) systems and their deployment under the Rail Safety Improvement Act of 2008.'' The task called for the RSAC PTC Working Group to perform the following:

- Review the mandates and objectives of the Act related to deployment of PTC systems;
- Help to describe the specific functional attributes of systems meeting the statutory purposes in light of available technology;
- Review impacts on small entities and ascertain how best to address them in harmony with the statutory requirements;
- Help to describe the details that should be included in the implementation plans that railroads must file within 18 months of enactment of the Act;
- Offer recommendations on the specific content of implementing regulations; and The task also required the PTC Working Group to:
- Report on the functionalities of PTC systems;
- Describe the essential elements bearing on interoperability and the requirements for consultation with other railroads in joint operations; and
- Determine how PTC systems will work with the operation of non-equipped trains.

The PTC Working Group was formed from interested organizations that are members of the RSAC. The following organizations contributed members:

American Association of State Highway & Transportation Officials (AAHSTO)
American Chemistry Council (ACC)
American Public Transportation Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
Association of American Railroads (AAR)
Association of State Rail Safety Managers (ASRSM)
Brotherhood of Maintenance of Way Employees Division (BMWED)
Brotherhood of Locomotive Engineers and Trainmen Division (BLETD)
Brotherhood of Railroad Signalmen
Federal Transit Administration*
International Brotherhood of Electrical Workers
National Railroad Construction and Maintenance Association
National Railroad Passenger Corporation (Amtrak)
National Transportation Safety Board (NTSB)*
Railway Supply Institute (RSI)
Transport Canada*
Tourist Railway Association Inc.
United Transportation Union (UTU)

*Indicates associate (non-voting) member.

From January to April 2009, FRA met with the entire PTC Working Group five times over the course of twelve days. During those meetings, in order to efficiently accomplish the tasks assigned to it, the PTC Working Group empowered three task forces to work concurrently. These task forces were the passenger, short line and regional railroad, and the radio and communications task forces. Each discussed issues specific to their particular interests and needs and produced proposed rule language for the PTC Working Group's consideration. The majority of the proposals were adopted into the rule as agreed upon by the working group, with rule language related to a remaining few issues being further discussed and enhanced for inclusion into the rule by the PTC Working Group.

The passenger task force discussed testing issues relating to parts 236 and 238 and the definition of ''main line'' under the statute, including possible passenger terminal and limited operations exceptions to PTC implementation. Recommendations of the task force were presented to the PTC Working Group, which adopted or refined each suggestion.

The short line and regional railroad task group was formed to address the questions pertaining to Class II and Class III railroads. Specifically, the group discussed issues regarding the trackage rights of Class II and III railroads using trains not equipped with PTC technology over a Class I railroad's PTC territory, passenger service over track owned by a Class II or Class III railroads where PTC would not otherwise be required, and railroad crossings-at-grade involving a Class I railroad's PTC-equipped train and a Class II or III railroad's PTC unequipped train. After much discussion, there were no resolutions reached to any of the main issues raised. However, the discussion yielded insights utilized by FRA in preparing this proposed rule.

The radio and communications task force addressed wireless communications issues, particularly as it relates to communications security, and recommended language for proposed § 236.1033.

FRA staff worked with the PTC Working Group and its task forces in developing many facets of this proposal. FRA gratefully acknowledges the participation and leadership of representatives who served on the PTC Working Group and its task forces. These points are discussed to show the origin of certain issues and the course of discussion on these issues at the task force and working group levels. We believe this helps illuminate the factors FRA weighed in making its regulatory decisions regarding this proposed rule and the logic behind those decisions.

In general, the PTC Working Group agreed on the process for implementing PTC under the statute, including decisional criteria to be applied by FRA in evaluating safety plans, adaptation of subpart H principles to support this mandatory implementation, and refinements to subpart H and the part 236 appendices necessary to dovetail the two regulatory regimes and take lessons from early implementation of subpart H, including most aspects of the training requirements. Notable accords were reached, as well, on major functionalities of PTC and on exceptions applicable to passenger

service (terminal areas and main line exceptions). Major areas of disagreement included whether to allow non-equipped trains on PTC lines, extension of PTC to lines not within the statutory mandate, and whether to provide for additional onboard displays when two or more persons are regularly assigned duties in the cab. Some additional areas of concern were discussed but could not be resolved in the time available. It was understood that where discussion did not yield agreement, FRA would make proposals and receive public comment.

V. Use of Performance Standards

Given the statutory mandate for the implementation of PTC systems, FRA intends the proposed rule to accelerate the promotion of, and not hinder, cost effective technological innovation by encouraging an efficient utilization of resources, an increased level of competition, and more innovative user applications and technological developments. FRA believes that, wherever possible, regulation must allow technologies the full freedom to exploit market opportunities, must support the challenges and opportunities resulting from the combination of emerging and varying technologies within an evolving marketplace, and should not discriminate between PTC systems vendors due to the technology or services provided.

Accordingly, wherever possible, FRA has attempted to refrain as much as possible from developing technical or design standards, or even requiring implementation of particular PTC technologies that may prevent technological innovation or the development of alternative means to achieve the statutorily defined PTC functions. If FRA were to implement specific technical standards, emerging technologies may render those standards obsolete. Thus, implementation of systems by the railroads using new technologies that are not addressed by the specific standards would require railroads and FRA to manage the deployment of alternative technologies using a cumbersome and time consuming waiver process. Consequently, for the same reasons FRA expressed in the final rule implementing subpart H (70 FR 11052, 11055–11059 (Mar. 7, 2005)), FRA continues to believe that it is best to pursue a performance-based standard while providing sufficient basic parameters within which the PTC system's architectures and functionalities must be developed, implemented, and maintained.

Like subpart H of part 236, proposed subpart I provides for the same level of product confidence and versatility in determining what PTC technology a railroad may elect to implement and operate, even if the railroad chooses to modify its PTC system over time. Unlike subpart H, however, proposed subpart I requires specific deployment of PTC while simplifying the application process, potentially reducing the size of the regulatory filings through facilitation of safety documentation reuse, and more narrowly defining the required performance targets based on railroad operations and in terms of more specific functional PTC behaviors. The approach under subpart I also reduces the likelihood of continually changing safety targets, which may vary based on each railroad's safety culture, and provides for incremental improvements in safety in coordination with FRA.

To ensure sufficient confidence in each PTC system implemented under subpart I, FRA expects that all safety- and risk-related data be supported by credible evidence or information. Such credible evidence or information may be developed through laboratory or field testing, augmented by appropriate analysis and inspection, which may be monitored or reviewed by FRA. FRA expects that, as a practical matter, lab testing would be performed in the majority of cases. FRA does not believe it is necessary to require any railroad to lab test. However, field testing may be required in certain instances to test certain points of the PTC system in various conditions.

If the railroad or FRA determines that the complexity of the technology or the supporting safety case warrants, credibility of this information may also be evaluated through an assessment of Verification and Validation performed by an acceptable independent third party selected and paid for by the railroad, subject to FRA approval. Ultimately, however, it is FRA's responsibility to determine whether each PTC system's performance results in an acceptable level of safety to railroad employees and the general public and whether any such system shall receive PTC System Certification, as required by statute. In order to provide meaningful flexibility, FRA is prepared to consider use of alternative risk analysis methods and proposals regarding the extent to which a product exhibits fail-safe behavior. FRA still emphasizes that higher speed and higher risk rail service should be supported by more highly competent train control technology and analysis.

FRA recognizes that there may potentially be various PTC system configurations and a variety of operational scopes involved. FRA believes that the information requested under subpart I should be sufficient to permit FRA to predict whether a PTC system is fully adequate from a safety perspective. Subparts H and I require submission of similar technical data. Given the degree of uncertainty associated with the underlying analysis of a complex PTC system and its environs, subpart I—much like subpart H—requires application of FRA's judgment and expertise. Given the complexity of the underlying analysis—and FRA's need to ensure an acceptable level of safety and analytical uniformity between functionally equivalent but architecturally different systems—it is incumbent upon the subject railroad, possibly in concert with the vendor, supplier, or manufacturer of its PTC system, to make a persuasive case in its filings that the applicable performance standards are met. Primarily, the risk assessments required by the proposed rule should provide an objective measure of the safety risk levels involved, which will be reviewed by FRA for comparison purposes. As such, FRA believes that each risk assessment should determine relative risk levels, rather than absolute risk levels, but against a clearly delineated base case acceptable to FRA under the proposed regulation.

Thus, this proposed rule attempts to emphasize the determination of relative risk. FRA believes that the guidelines captured in Appendix B adequately state the objectives and major considerations of any risk assessment it would expect to see submitted under proposed subpart I. FRA also believes that these guidelines allow sufficient flexibility in the conduct of risk assessments, yet provide sufficient uniformity by helping to ensure that final results are presented in familiar units of measurement.

One of the major characteristics of a risk assessment is whether it is performed using qualitative or quantitative methods. FRA continues to believe that both quantitative and qualitative risk assessment methods may be used, as well as combinations of the two. FRA expects that qualitative methods should be used only where appropriate, and only when accompanied by an explanation as to why the particular risk cannot be fairly quantified. FRA also continues to believe that railroads and suppliers should not be limited in the type of risk assessments they should be allowed to perform to demonstrate compliance with the minimum performance standard. The state of the art of risk

assessment methods could potentially change more quickly than the regulatory process will allow, and not taking advantage of these innovations could slow the progress of implementation of safer signal and train control systems. Thus, as in subpart H, FRA is allowing risk assessment methods not meeting the guidelines of this rule, so long as it can be demonstrated to the satisfaction of the FRA Associate Administrator for Railroad Safety/Chief Safety Officer (hereinafter Associate Administrator) that the risk assessment method used is suitable in the context of the particular PTC system. FRA believes this determination is best left to the Associate Administrator because the FRA retains authority to ultimately prevent implementation of a system whose plans do not adequately demonstrate compliance with the performance standard under the proposed rule.

FRA is aware that some types of risk are more amenable to measurement by using certain methods rather than others because of the type and amount of data available. If a railroad does elect to use different risk assessment methods, FRA will consider this as a factor for PTC System Certification (*see* § 236.1015). Also, in such cases, when the margin of uncertainty has been inadequately described, FRA will be more likely to require FRA monitored field or laboratory testing (*see* § 236.1035) or an independent third-party assessment (see § 236.1017).

When FRA issued the final rule establishing subpart H, FRA considered the criteria of simplicity, relevancy, reliability, cost, and objectivity. FRA believes that these criteria remain applicable. FRA has attempted to make the requirements under subpart I simpler than the requirements of subpart H, so that railroads will be provided with a greater amount of flexibility to more easily demonstrate that its PTC system is certifiable by FRA. Like subpart H, subpart I focuses on the safety-relevant characteristics of systems and emphasizes all relevant aspects of product performance. FRA also drafted performance standards that can be applied reliably and precisely in a manner which should yield similar results each time it is applied to the same subject. Although RSIA08 appears to make cost a consideration secondary to safety, FRA believes that demonstrating compliance under subpart I should minimize those costs while not degrading the primary objective of public safety. FRA also believes that subpart I includes an objective performance standard where compliance can be determined through sound engineering analysis, testing, or investigation.

VI. Section-by-Section Analysis

Unless otherwise noted, all section references below refer to sections in title 49 of the Code of Federal Regulations (CFR). FRA seeks comments on all proposals made in this NPRM.

Proposed Amendments to 49 CFR Part 229

Section 229.135 Event Recorders

Advances in electronics and software technology have not only enabled the development of PTC systems, but have also resulted in changes to the implementation of locomotive control systems. These technological changes have provided for the introduction of new functional capabilities and the integration of different functions in ways that advance the building, operation, and maintenance of locomotive control systems. FRA also recognizes that advances in technology may further eliminate the traditional distinctions between locomotive control and train control functionalities. Indeed, technological advances may provide opportunities for increased or improved functionalities in train control systems that run concurrently with locomotive control.

Train control and locomotive control, however, remain two fundamentally different operations with different objectives. FRA does not want to restrict the adoption of new locomotive control functions and technologies by imposing regulations on locomotive control systems intended to address safety issues associated with train control. Accordingly FRA is reviewing and enhancing the Locomotive Safety Standards (49 CFR part 229) to address the use of advanced electronics and software technologies to improve safe, efficient, and economical locomotive operations when a new or proposed locomotive control system function does not interface or commingle with a safety-critical train control system. In the meantime, FRA proposes to amend § 229.135 to ensure its applicability to subpart I.

Proposed Amendments to 49 CFR Part 234

Section 234.275 Processor-Based Systems

Section 234.275 of title 49 presently requires that each processor-based system, subsystem, or component used for active warning at highway-rail grade crossings that is new or novel technology, or that provides safety-critical data to a railroad signal or train control system which is qualified using the subpart H process, shall also be governed by those requirements, including approval of a Product Safety Plan. Particularly with respect to high speed rail, FRA anticipates that PTC systems will in some cases incorporate new or novel technology to provide for crossing pre-starts (reducing the length of approach circuits for high speed trains), verify crossing system health as between the wayside and approaching trains, or slow trains approaching locations where storage has been detected on a crossing, among other options. Indeed, each of these functions is presently incorporated in at least one train control system, and others may one day be feasible (including in-vehicle warning). There would appear to be no reason why such a functionality intended for inclusion in a PTC system mandated by subpart I could not be qualified with the rest of the PTC system under subpart I. On the other hand, care should be taken to set an appropriate safety standard taking into consideration highway users, occupants of the high speed trains, and others potentially affected.

In fact, with new emphasis on high speed rail, FRA needs to consider the ability of PTC systems to integrate this type of new technology and thereby reduce risk associated with high speed rail service. Risk includes derailment of a high speed train with catastrophic consequences after encountering an obstacle at a highway-rail grade crossing. To avoid such consequences, as many crossings as possible should be eliminated. To that end, 49 CFR 213.347 requires a warning and barrier plan to be approved for Class 7 track (speeds above 110 mph) and prohibits grade crossings on Class 8 and 9 track (above 125 mph). That leaves significant exposure on Class 5 and 6 track that is currently not addressed by regulation. Comment is requested on how best to approach this issue, ensuring that various FRA regulations, including subpart I, address this safety need effectively and in harmony with one another.

Proposed Amendments to 49 CFR Part 235

Section 235.7 Changes Not Requiring Filing of Application

FRA proposes to amend this section of the regulation which allows specified changes within existing signal or train control systems be made without the necessity of filing an application. The amendment consists of adding allowance for a railroad to remove an intermittent automatic train stop system

in conjunction with the implementation of a PTC system approved under subpart I of part 236.

The changes allowable under this section, without filing of an application, are those identified on the basis that the resultant condition will be at least no less safe than the previous condition. The required functions of PTC within subpart I provide a considerably higher level of functionality related to both alerting and enforcing necessary operating limitations than an intermediate automatic train stop system does. Additionally, in the event of the loss of PTC functionality (*i.e.,* a failure en route), the operating restrictions required will provide the needed level of safety in lieu of the railroad being expected to keep and maintain an underlying system such as intermittent automatic train stop for only in such cases. FRA therefore believes that with the implementation of PTC under the requirements of subpart I, the safety value of any previously existing intermittent automatic train stop system is entirely obviated. There were no objections in the PTC Working Group to this amendment.

Proposed Amendments to 49 CFR Part 236

Section 236.0 Applicability, Minimum Requirements, and Penalties

FRA proposes to amend this existing section of the regulation to remove manual block from the methods of operation permitting speeds of 50 miles per hour or greater for freight trains and 60 miles per hour or greater for passenger trains. Manual block rules do create a reasonably secure means of preventing train collisions. However, where the attributes of block signal systems are not present, misaligned switches, broken rails, or fouling equipment may cause a train accident. FRA believes that contemporary expectations for safe operations require this adjustment, which also provides a more orderly foundation for the application of PTC to the subject territories. There were no objections in the PTC Working Group to this change.

Section 236.909 Minimum Performance Standard

FRA is proposing to modify existing § 236.909 to make the risk metric sensitivity analysis an integral part of the full risk assessment required to be submitted with a product safety plan in accordance with § 236.907(a)(7). The proposed amendment of this section would also eliminate an alternative option for a railroad to use a risk metric in which consequences of potential accidents are measured strictly in terms of fatalities.

Currently, § 236.909(e)(1) indicates how safety and risk should be measured for the full risk assessment, but does not accentuate the need for running a sensitivity analysis on chosen risk metrics to assure that the worst case scenarios for the proposed system failures or malfunctions are accounted for in the risk assessment. On the other hand, Appendix B to this part mandates that each risk metric for the proposed product must be expressed with an upper bound, as estimated with a sensitivity analysis. The FRA's experience gained while reviewing product safety plans submitted to FRA in accordance with subpart H, revealed that the railroad's did not understand a sensitivity analysis for the chosen risk metrics to be a mandatory requirement. Accordingly, to ensure clarity regarding FRA's expectations, FRA proposes to amend paragraph (e)(1) to explicitly require the performance of a sensitivity analysis for the chosen risk metrics. The language proposed in this rule explains the need for the sensitivity analysis and describes the key input parameters that must be analyzed.

The proposed modification to paragraph (e)(2) is intended to clarify how the exposure and its consequences, as main components of the risk computation formula, must be measured. Under the proposed rule text, the exposure must be measured in train miles per year over the relevant railroad infrastructure where a proposed system is to be implemented. When determining the consequences of potential accidents, the railroad must identify the total costs involved, including those relating to fatalities, injuries, property damage, and other incidentals. FRA proposes to eliminate the option of using an alternative risk metric, which would allow the measurement of consequences strictly in terms of fatalities. It is FRA's experience that measuring consequences of accidents strictly in terms of fatalities did not serve as an adequate alternative to metrics of total cost of accidents for two main reasons. First, the statistical data on railroad accidents shows that accidents involving fatalities also cause injuries and significant damage to railroad property and infrastructure for both freight and especially passenger operations. Even though the cost of human life is often the highest component of monetary estimates of accident consequences, the dollar estimates of injuries, property losses, and damage to the environment associated with accidents involving fatalities cannot and should not be discounted in the risk analysis. Second, allowing fatalities to serve as the only risk metrics of accident consequences confused the industry and the risk assessment analysts attempting to determine the overall risk associated with the use of certain types of train control systems. As a result, some risk analysts inappropriately converted injuries and property damages for observed accidents into relative estimates of fatalities. This method cannot be considered acceptable because, while distorting the overall picture of accident consequences, it also raises questions on appropriateness of conversion coefficients. Therefore, FRA considers it appropriate to eliminate from the rule the alternative option for consequences to be measured in fatalities only.

Subpart I—Positive Train Control Systems

Section 236.1001 Purpose and Scope

This section describes both the purpose and the scope of subpart I. Subpart I provides performance-based regulations for the development, test, installation, and maintenance of Positive Train Control (PTC) Systems, and the associated personnel training requirements, that are mandated for installation by FRA. This subpart also details the process and identifies the documents that railroads and operators of passenger trains are to utilize and incorporate in their PTC implementation plans. This subpart also details the process and procedure for obtaining FRA approval of such plans.

Section 236.1003 Definitions

Given that a natural language such as English contains, at any given time, a finite number of words, any comprehensive list of definitions must either be circular or leave some terms undefined. In some cases, it is not possible and indeed not necessary to state a definition. Where possible and practicable, FRA prefers to provide explicit definitions for terms and concepts rather than rely solely on a shared understanding of a term through use.

Paragraph (a) reinforces the applicability of existing definitions of subparts A through H. The definitions of subparts A through H are applicable to subpart I, unless otherwise modified by this part.

Paragraph (b) introduces definitions for a number of terms that have specific meanings within the context of subpart I. In lieu of analyzing each definition here, however, some of the delineated

terms will be discussed as appropriate while analyzing other sections below.

As a general matter, however, FRA believes it is important to explain certain organizational changes required pursuant to RSIA08. The statute establishes the position of a Chief Safety Officer. The Chief Safety Officer has been designated as the Associate Administrator for Railroad Safety. Thus, the use of the term Associate Administrator in this subpart refers to the Associate Administrator for Railroad Safety and Chief Safety Officer.

Section 236.1005 Requirements for Positive Train Control Systems

RSIA08 specifically requires that each PTC system be designed to prevent train-to-train collisions, overspeed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position. Section 236.1005 includes the minimum statutory requirements and provides amplifying information defining the necessary PTC functions and the situations under which PTC systems must be installed. Each PTC system must be reliable and perform the functions specified in RSIA08. FRA requests comments on whether the definitions and amplifying information within § 236.1005 are appropriate interpretations of RSIA08 and whether FRA is exercising the appropriate level of discretion and flexibility to comply with RSIA08 in the most cost effective and efficient manner.

Train-to-train collisions. Paragraph (a)(1)(i) proposes to apply the statutory requirement that a mandatory PTC system must be designed to prevent train-to-train collisions. FRA understands this to mean head-to-head, rear-end, and side and raking collisions between trains on the same, converging, or intersecting tracks. PTC technology now available can meet these needs through guidance to the locomotive engineer that is current and continuous and through enforcement using predictive braking to stop short of known targets. FRA notes that the technology associated with currently available PTC systems may not completely eliminate all collisions risks. For instance, a PTC system mandated by this subpart is not required to prevent a collision caused by a train that derails and moves over an area not covered by track and onto a neighboring or adjacent track (known in common parlance as a ''secondary collision'').

During discussions regarding available PTC technology, it has been noted that this technology also has inherent limitations with respect to prevention of certain collisions that might occur at restricted speed. In signaled territory, there are circumstances under which trains may pass red signals, other than absolute signals except with verbal authority, either at restricted speed or after stopping and then proceeding at restricted speed. Available PTC technology does not track the rear end of each train as a target that another train must be stopped short of but instead relies on the signal system to indicate the appropriate action. In this example, the PTC system would display ''restricted speed'' to the locomotive engineer as the action required and would enforce the upper limit of restricted speed (*i.e.,* 15 or 20 miles per hour, depending on the railroad). This means that more serious rear end collisions will be prevented, because the upper limit of restricted speed is enforced, and it also means that fewer low speed rear-end collisions will occur because a continuous reminder of the required action will be displayed to the locomotive engineer (rather than the engineer relying on the aspect displayed by the last signal, which may have been passed some time ago). However, some potential for a low-speed rear-end collision will remain in these cases, and the rule is clear that this limitation has been accepted. Similar exposure may occur in non-signaled territory where trains are conducting switching operations or other activities under joint authorities. The PTC system can enforce the limits of the authority and the upper limit of restricted speed, but it cannot guarantee that the trains sharing the authority will not collide. Again, however, the likelihood and average severity of any potential collisions would be greatly reduced. FRA may address this issue in a later modification to subpart I if necessary as technology becomes available.

The proposed rule text does, however, provide an example of a potential train-to-train collision that a PTC system should be designed to prevent. Rail-to-rail crossings-at-grade—otherwise known as diamond crossings—present a risk of side collisions. FRA recognizes that such intersecting lines may or may not require PTC system implementation and operation. Since a train operating with a PTC system cannot necessarily recognize a train not operating with a PTC system or moving on an intersecting track without a PTC system, the PTC system—no matter how intelligent—may not be able to prevent a train-to-train collision in such circumstances.

Accordingly, paragraph (a)(1)(i) proposes to require certain protections for such rail-to-rail crossings-at-grade. While these locations are specifically referenced in paragraph (a)(1)(i), their inclusion is merely illustrative and does not necessarily preclude any other type of potential train-to-train collision. Moreover, a host railroad may have alternative arrangements to the specific protections referenced in the associated table under paragraph (a)(1)(i), which it must submit in its PTC Safety Plan (PTCSP)—discussed in detail below—and receive a PTC System Certification associated with that PTCSP.

Rail-to-rail crossings-at-grade that have one or more PTC routes intersecting with one or more routes without a PTC system must have an interlocking signal arrangement in place developed in accordance with subparts A through G of part 236 and a PTC enforced stop on all PTC routes. FRA has also determined that the level of risk varies based upon the speeds at which the trains operate through such crossings, as well as the presence, or lack, of PTC equipped lines leading into the crossing. Accordingly, under a compromise accepted by the PTC Working Group, if the maximum speed on at least one of the intersecting tracks is more than 40 miles per hour, then the routes without a PTC system must also have either some type of positive stop enforcement or a split-point derail on each approach to the crossing and incorporated into the signal system, and a permanent maximum speed limit of 20 miles per hour. FRA expects that these protections be instituted as far in advance of the crossing as is necessary to stop the encroaching train from entering the crossing. The 40 miles per hour threshold appears to be appropriate given three factors. First, the frequency of collisions at these rail intersections is low, because typically one of the routes is favored on a regular basis and train crews expect delays until signals clear for their movement. Second, the special track structure used at these intersections, known as crossing diamonds, experiences heavy wear; and railroads tend to limit speeds over these locations to no more than 40 miles per hour. Finally, FRA recognizes that for a train on either intersecting route, elevated speed will translate into higher kinetic energy available to do damage in a collision-induced derailment. Thus, for the relatively small number of rail crossings with one or more routes having an authorized train speed above 40 miles per hour, including higher speed passenger routes, it is particularly important that any collision be prevented. FRA appreciates that a more protective approach could be considered and welcomes any data or

commentary that might bear on this issue.

FRA believes that these more aggressive measures are required to ensure train safety in the event the engineer does not stop a train before reaching the crossing when the engineer does not have a cleared route displayed by the interlocking signal system and higher speed operations are possible on the route intersected. The split-point derail would prevent a collision in such a case by derailing the offending train onto the ground before it reaches the crossing. Should the train encounter a split-point derail as a result of the crew's failure to observe the signal indication, the slower speed at which the unequipped train is required to travel would minimize the damage to the unequipped train and the potential affect on the surrounding area. As an alternative to split-point derails, the non-PTC line may be outfitted with some other mechanism that ensures a positive stop of the unequipped crossing train. If a PTC system or systems are installed and operated on all crossing lines, there are no speed restrictions other than those that might be enforced as part of a civil or temporary speed restriction. However, the crossing must be interlocked and the PTC system or systems must ensure that each of the crossing trains can be brought safely to a stop before reaching the crossing in the event that another train is already cleared through or occupying the crossing.

Overspeed derailments. Paragraph (a)(1)(ii) proposes that PTC systems mandated under subpart I be designed to prevent overspeed derailments and addresses specialized requirements for doing so. FRA notes that a number of passenger train accidents with significant numbers of injuries have been caused by trains exceeding the maximum allowable speed at turnouts and crossovers and upon entering stations. Accordingly, FRA emphasizes the importance of enforcement of turnout and crossover speed restrictions, as well as civil speed restrictions.

For instance, in the Chicago region, two serious train accidents occurred on the same Metra commuter line when locomotive engineers operated trains at more than 60 miles per hour while traversing between tracks using crossovers, which were designed to be safely traversed at 10 miles per hour. For illustrative purposes, the rule text makes clear that such derailments may be related to railroad civil engineering speed restrictions, slow orders, and excessive speeds over switches and through turnouts and these types of speed restrictions are to be enforced by the system.

Roadway work zones. Paragraph (a)(1)(iii) proposes that PTC systems mandated under subpart I be designed to prevent incursions into established work zone limits. Work zone limits are defined by time and space. The length of time a work zone limit is applicable is determined by human elements. Working limits are obtained by contacting the train dispatcher, who will confirm an authority only after it has been transmitted to the PTC server. Paragraph (a)(1)(iii) emphasizes the importance of the PTC systems to provide positive protection for roadway workers working within the limits of their work zone. Accordingly, once a work zone limit has been established, the PTC system must be notified. The PTC system must continue to obey that limit until it is notified from the dispatcher or roadway worker in charge, with verification from the other, either that the limit is released and the train is authorized to enter or the roadway worker in charge authorizes movement of the train through the work zone.

As a way to achieve this technological functionality, FRA's Office of Railroad Development has funded the development of a Roadway Worker Employee in Charge (EIC) Portable Terminal that allows the EIC to control the entry of trains into the work zone. While no rule includes the commonly used term EIC, FRA recognizes that it is the equivalent to the ''Roadway Worker In Charge'' as used in part 214. With the portable terminal, the EIC can directly control the entry of trains into the work zone and restrict the speed of the train through the work zone. If the EIC does not grant authority for the train to enter the work zone, the train is forced to a stop prior to violating the work zone authority limits. If the EIC authorizes entry of the train into the work zone, the EIC may establish a maximum operating speed for the train consistent with the safety of the roadway work employees. This speed is then enforced on the train authorized to enter and pass through the work zone. The technology is significantly less complex than the technology associated with dispatching systems and the PTC onboard system. In view of this, FRA strongly encourages deployment of such portable terminals as opposed to current approaches which only require the locomotive engineer to in some manner ''acknowledge'' his or her authority to operate into or through the limits of the work zone (*e.g.,* by pressing a soft key on the onboard display, even if in error).

Pending the adoption of more secure technology such as the EIC Portable Terminal, FRA will scrutinize PTC Safety Plans to determine whether they leave no opportunity for single point human failure in the enforcement of work zone limits. FRA again notes that some approaches in the past have provided that the locomotive engineer could simply acknowledge a work zone warning, even if inappropriately, after which the train could proceed into the work zone. FRA proposes that more secure procedures be included in safety plans under the new proposed subpart.

Movement over main line switches. Paragraph (a)(1)(iv) proposes to require that PTC systems mandated under subpart I be designed to prevent the movement of a train through a main line switch in the improper position. Given the complicated nature of switches—especially when operating in concert with wayside, cab, or other similar signal systems—the proposed rule provides more specific requirements in paragraph (e) as discussed further below.

In numerous paragraphs, the proposed rules require various operating requirements based primarily on signal indications. Generally, these indications are communicated to the engineer, who would then be expected to operate the train in accordance with the indications and authorities provided. However, a technology that receives the same information does not necessarily have the wherewithal to respond unless it is programmed to do so. Thus, paragraph (a)(2) requires PTC systems implemented under subpart I to obey and enforce all such indications and authorities provided by these safety-critical underlying systems. The integration of the delivery of the indication or authority with the PTC system's response to those communications must be described and justified in the PTC Development Plan (PTCDP)—further described below—and the PTCSP, as applicable, and then must comply with those descriptions and justifications.

The PTC Working Group had extensive discussions concerning the monitoring of main line switches and came to the following general conclusions:

First, signal systems do a good job of monitoring switch position, and enforcement of restrictions imposed in accordance with the signal system is the best approach within signaled territory (main track and controlled sidings). As a general rule, the enforcement required for crossovers, junctions, and entry into and departure from controlled sidings will be a positive stop, and the enforcement provided for other switches (providing access to industry tracks and

non-signaled sidings and auxiliary tracks) will be display and enforcement of the upper limit of restricted speed. National Transportation Safety Board representatives were asked to evaluate whether this strategy meets the needs of safety from their perspective. They returned with a list of accidents caused by misaligned switches that the Board had investigated in recent years, none of which was in signaled territory. Based on that data, the NTSB staff decided that it was not necessary to monitor individual switches in signaled territory.

Second, switch monitoring functions of contemporary PTC systems provide an excellent approach to addressing this requirement in dark territory. However, it is important to ensure that switch position is determined with the same degree of integrity that one would expect within a signaling system (*e.g.,* fail safe point detection, proper verification of adjustment). The PTC Working Group puzzled over sidings in dark territory and how to handle the requirement for switch monitoring in connection with those situations. (While these are not ''controlled'' sidings, as such, they will often be mapped so that train movements into and out of the sidings are appropriately constrained.) At the final PTC Working Group meeting, a proposal was accepted that would treat a siding as part of the main line track structure requiring monitoring of each switch off of the siding if the siding is non-signaled and the authorized train speed within the siding exceeds 20 miles per hour.

This issue is more fully discussed below.

Other functions. While FRA has included the core PTC system requirements in § 236.1005, there is the possibility that other functions may be explicitly or implicitly required elsewhere in subpart I. Accordingly, under paragraph (a)(3), each PTC system required by subpart I must also perform any other functions specified in subpart I. According to 49 U.S.C. 20157(g), FRA must prescribe regulations specifying in appropriate technical detail the essential functionalities of positive train control systems and the means by which those systems will be qualified.

In addition to the general performance standards required under paragraphs (a)(1)–(3), paragraph (a)(4) proposes more prescriptive performance standards relating to the situations paragraphs (a)(1)–(3) intend to prevent. Paragraph (a)(4) defines specific situations where FRA has determined that specific warning and enforcement measures are necessary to provide for the safety of train operations, their crews, and the public and to accomplish the goals of the PTC system's essential core functions. Under paragraph (a)(4)(i), FRA proposes to prevent unintended movements onto PTC main lines and possible collisions at switches by ensuring proper integration and enforcement of the PTC system as it relates to derails and switches protecting access to the main line. Paragraph (a)(4)(ii) intends to account for operating restrictions associated with a highway-rail grade crossing active warning system that is in a reduced or non-operative state and unable to provide the required warning for the motoring public. In this situation, the PTC system must provide positive protection and enforcement related to the operational restrictions of alternative warning that are issued to the crew of any train operating over such crossing in accordance with part 234. Paragraph (a)(4)(iii) concerns the movement of a PTC operated train in conjunction with the issuance of an after arrival mandatory directive. While FRA recognizes that the use of after arrival mandatory directives poses a risk that the train crew will misidentify one or more trains and proceed prematurely, PTC provides a means to intervene should that occur. Further, such directives may sometimes be considered operationally useful. Accordingly, FRA fully expects that the PTC system will prevent collisions between the receiving trains and the approaching train or trains.

FRA recognizes that movable bridges, including draw bridges, present an operational issue for PTC systems. Under subpart C, § 236.312 already governs the interlocking of signal appliances with movable bridge devices and FRA believes that this section should equally apply to PTC systems governing movement over such bridges. While subparts A through H apply to PTC systems—as stated in § 236.1001—paragraph (a)(4)(iv) proposes to make this abundantly clear. Accordingly, in paragraph (a)(4)(iv) and consistent with § 236.312, movable bridges within a PTC route are to be equipped with an interlocked signal arrangement which is also to be integrated into the PTC system. A train shall be forced to stop prior to the bridge in the event that the bridge locking mechanism is not locked, the locking device is out of position, or the bridge rails of the movable span are out of position vertically or horizontally from the rails of the fixed span. Effective locking of the bridge is necessary to assure that the bridge is properly seated and thereby capable to support both the weight of the bridge and that of a passing train(s) and preventing possible derailment or other potential unsafe conditions. Proper track rail alignment is also necessary to prevent derailments, either of which again could result in damage to the bridge or a train derailing off the bridge.

Paragraph (a)(4)(v) proposes that hazard detectors integrated into the PTC system—as required by paragraph (c) of this section or the FRA approved PTCSP—must provide an appropriate warning and associated applicable enforcement through the PTC system. There are many types of hazard detection systems and devices. Each type has varying operational requirements, limitations, and warnings based on the types and levels of hazard indications and severities. FRA expects this enforcement to include a positive stop where necessary to protect the train (*e.g.,* areas with high water, flood, rock slide, or track structure flaws) or to provide an appropriate warning with possible movement restriction be acknowledged (*i.e.,* hot journal or flat wheel detection). The details of these warnings and associated required enforcements are to be specifically addressed within a PTCDP and PTCSP subject to FRA approval, and the PTC system functions are to be maintained in accordance with the system specifications. FRA does not expect that all hazard detectors be integrated into the PTC systems, but where they are, they must interact properly with the PTC system to protect the train from the hazard that the detector is monitoring.

Paragraph (a)(5) addresses the issue of broken rails, which is the leading cause of train derailments. FRA proposes to strictly limit the speed of passenger and freight operations in those areas where broken rail detection is not provided. Under § 236.0(c), as amended in this rule, 24 months after the effective date of a final rule, freight trains operating at or above 50 miles per hour, and passenger trains operating at or above 60 miles per hour are required to have a block signal system unless a PTC system meeting the requirements of this part is installed. Since current technology for block signal systems relies on track circuits—which also provide for broken rail detection—FRA proposes limiting speeds where broken rail detection is not available to the maximums allowed under § 236.0 when a block signal system is not installed.

Deployment requirements. Paragraph (b) contains proposed requirements for where and when PTC systems must be installed. Under RSIA08, each applicable railroad carrier must implement a PTC system in accordance with its PTC Implementation Plan

(PTCIP), as further discussed below. The PTCIP is statutorily required to be submitted by April 16, 2010, and must explain how the railroad or railroads intend to implement an operating PTC system by December 31, 2015. Essentially, a PTC system must be installed on certain tracks. In addition, except as provided under § 236.1006, onboard components required for and responsive to the PTC system must be installed on each lead locomotive that operates over those tracks.

The lead locomotive means the first locomotive proceeding in the direction of movement. In addition to the lead locomotive that controls the train while moving in a forward direction, a PTC system must be installed on any rear end unit control cab locomotive that is capable of controlling the train when it moves in the reverse direction. These proposed requirements assume that locomotives controlling the train may be placed only at each end. At this time, FRA is unaware of any locomotives not placed at either end of the train that may independently control the train. FRA seeks comments and information regarding these assumptions and understandings.

As a threshold matter, RSIA08 requires that a PTC system be installed on certain main lines of each entity required to file a PTCIP. According to the statute, a main line is, with certain exceptions, a Class I railroad track over which 5 million or more gross tons of railroad traffic is transported annually. Pursuant to the statute, FRA may also designate additional tracks as main line and may provide exceptions for intercity rail or commuter passenger transportation over track where limited or no freight railroad operations occur. The statutory language does not indicate whether the phrase ''main line'' refers to the route used or actual trackage owned by the subject railroad. It is clear, however, that Congress intended to focus implementation and operation of PTC systems on freight lines owned or used by Class I railroads for operations specifically identified in the statute.

For instance, by referencing Class I railroads—and not referencing any other type of freight railroad—FRA believes that Congress did not intend, as a general matter, to have smaller freight railroads incur the tremendous costs involved in PTC system implementation and operation unless they own track over which is provided regularly schedule intercity or commuter rail passenger transportation. Congress gives the Secretary discretion in 49 U.S.C. 20157(f) to require the installation of PTC systems on railroads other than Class I railroads and intercity or commuter passenger systems.

The Surface Transportation Board (STB) has established a statutory definition for Class I, II, and III railroads based on the reported revenues in 1992. A reference to Class I railroads in this subpart refers to those railroads that have been designated as such by the Surface Transportation Board (STB). According to STB, a Class I railroad has revenues greater than $250 million (adjusted annually for inflation); a Class II railroad has revenues ranging from $20 million to $250 million (adjusted annually for inflation); and a Class III railroad has revenues that are less than $20 million (adjusted annually for inflation). All switching and terminal railroads, regardless of revenue size, are Class III railroads. The STB railroad classification determines the amount of reporting which a carrier must file with the STB. Class I railroads are required to file an annual R–1 Report, a detailed income, expense, and operating data report, quarterly and annual freight carload commodity reports, and reports on types of employees and employee compensation (Wage Form A and B).

From time to time, as some Class II railroads approached the Class I railroad revenue threshold, these carriers petitioned the STB to remain as Class II railroads, so that these carriers would not be burdened with the additional reporting requirements. Generally the STB allowed this exemption. Accordingly, there may be some large railroads—including Montana Rail Link and Florida East Coast—that are Class II railroads ''by waiver,'' thereby freeing them from having to file Class I railroad reports with the STB.

In drafts of this proposed rule provided to the RSAC PTC Working Group, it was suggested that a Class I railroad's main line be defined as track owned and controlled by the Class I railroad. By also including track ''controlled'' by the Class I railroad, FRA intended to include tracks not owned by Class I railroads, but used in a manner as if the Class I railroad did own that track. For instance, under the term ''controlled,'' FRA intended that a track owned by a Class II or III railroad would be considered a main line if a Class I railroad had effective control over the Class II or III railroad or that specific track. Without the ''control'' requirement, Class I railroads could divest themselves of track ownership while maintaining effective control for the purposes of avoiding PTC system implementation.

The American Short Line and Regional Railroad Association (ASLRRA), however, expressed concern with this provision, instead suggesting that a Class I railroad's main line include only those lines owned and ''operated'' by the Class I railroad. FRA believes that the underlying ASLRRA concern is that many of its member railroads may go out of business if they are mandated to install PTC systems and incur the associated untenable financial costs. FRA agrees that, from the point of view of the congressional mandate, a narrower concept is appropriate at this time. However, in light of future circumstances relating to railroad revenue, safety opportunities, traffic patterns, and other variables, FRA also recognizes that it may later require PTC system implementation and operation on certain Class II and III railroad tracks.

To avoid confusion, FRA proposes to define main line by standards applicable to a single element. In its effort to define a Class I railroad's main line as track owned and controlled by the Class I railroad, FRA focuses the proposed definition on the status of the track. To also focus on the issue of operations could raise confusion and irreconcilable understandings. Thus, FRA is not comfortable with ASLRRA's suggestion. To accomplish FRA's goal and respond to ASLRRA's concerns, however, FRA has limited a Class I railroad's main lines to tracks and segments documented in the timetables last filed before October 16, 2008, by the Class I railroads with FRA under § 217.7 of this title over which 5 million or more gross tons of railroad traffic is transported annually. For most of its territory, each railroad is already required to track tonnage in order to satisfy the requirements for joint bar and internal rail flaw inspections. See 213.119 (table), 213.237. Thus, FRA does not expect this determination to be difficult for railroads. For railroads that are required to submit a PTCIP by April 16, 2010, the gross tonnage will be based on 2008 year traffic. To the extent rail traffic exceeds 5 million gross tons in any year after 2008, the tonnage shall be calculated for the preceding two calendar years in determining whether a PTCIP or its amendment is required. FRA seeks comments on whether any tracks intended to be covered would be missed under this approach and on whether there is a better approach.

The RSIA08 requires certain tracks to be considered main line where a certain amount of railroad traffic is transported. However, in certain yard or terminal locations, trains are prepared for transportation, but railroad traffic is not ''transported.'' Moreover, FRA recognizes that in such locations, PTC system operation would be especially cumbersome and onerous and possibly

resulting in a reduction of safety due to inappropriate interventions by the PTC system that could lead to ''train handling'' derailments or hazards to personnel riding the sides of rolling stock. Accordingly, in such locations, FRA may not consider the subject tracks as main line. For such locations that only include freight operations, FRA proposes to consider these tracks other than main line by definition if all trains in the location are limited to restricted speed.

However, for any tracks used by passenger trains, FRA proposes that any designation of track as other than main line should be performed on a case-by-case basis in accordance with § 236.1019. FRA seeks comments on this issue. FRA also seeks comments on whether this explanation comports with the railroads' understanding of the rule text.

Once a Class I railroad's main lines are determined, a PTC system must be installed and operated on those main line tracks over which passenger trains are operated or any PIH materials are is transported. As a corollary, PTC systems are not required on a Class I railroad's lines over which no PIH materials are transported and no passenger trains are operated. In addition to an applicable Class I railroad's main lines, a PTC system must be implemented and operated on all railroads' main lines over which regularly scheduled intercity rail passenger transportation or commuter rail passenger transportation, as defined by 49 U.S.C. 24102, is provided. However, FRA does not intend to apply this requirement to tracks operated by tourist railroads, as described in 49 U.S.C. 20103(f), because, *inter alia,* they are not Class I railroads and they do not provide regularly scheduled intercity or commuter passenger service.

According to 49 U.S.C. 24102, ''intercity rail passenger transportation'' means rail passenger transportation, except commuter rail passenger transportation. 49 U.S.C. 24102 defines commuter rail passenger transportation as ''short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations.''

49 CFR 238.5 provides further guidance, defining a long-distance intercity passenger train as ''a passenger train that provides service between large cities more than 125 miles apart and is not operated exclusively in the National Railroad Passenger Corporation's Northeast Corridor'' and a commuter train as ''a passenger train providing commuter service within an urban, suburban, or metropolitan area. The term includes a passenger train provided by an instrumentality of a State or a political subdivision of a State.'' Section 238.5 also defines passenger service as ''a train or passenger equipment that is carrying, or available to carry, passengers. Passengers need not have paid a fare in order for the equipment to be considered in passenger or in revenue service.'' According to § 238.5, a passenger train is ''a train that transports or is available to transport members of the general public. If a train is composed of a mixture of passenger and freight equipment, that train is a passenger train for purposes of this part.''

While the statute generally limits mandatory PTC system implementation and operation to certain main lines—defined for freight purposes as track over which 5 million or more gross tons of railroad traffic is transported annually—FRA is required to define passenger main line by regulation. *See* 49 U.S.C. 20157(i)(2)(B). In that regard, FRA has determined that freight density, as such, is not a relevant factor. FRA intends to cover the same intercity and commuter passenger services as 49 CFR part 238 (Passenger Equipment Safety Standards), which excludes tourist railroads (49 CFR 238.3). *See also,* 49 CFR part 209, Appendix A.

As a corollary, after December 31, 2015, no intercity or commuter passenger operations may operate on any track that does not have a PTC system installed, except as described in the proposed rule. A PTC system must be installed on any track—regardless of its ownership or the weight of annual traffic—before any intercity or commuter rail passenger operation may operate. Thus, any passenger or freight track over which such passenger trains operate must be PTC-equipped.

The RSIA08 requires each intercity and commuter passenger railroad to implement PTC on ''its main line over which intercity rail passenger transportation or commuter rail passenger transportation, as defined in section 24102, is regularly provided.'' Section 24102 uses the terms ''intercity'' and ''commuter'' in essentially the same way FRA has used the terms for safety regulatory purposes. The single question that has been puzzling in considering this mandate has been the meaning of the possessive article, ''its,'' before ''main line.'' It appears clear from the course of congressional consideration that the expression was intended to apply to the passenger railroad's entire route system, regardless of ownership. Amtrak's route system includes predominately trackage owned or controlled by others. Many commuter railroads operate partially or even exclusively over lines owned by freight railroads. On the other hand, FRA is persuaded that the same intention does not apply as to Class I freight railroads. A Class I freight railroad might operate a train under trackage rights over a Class II or III railroad, but it does not appear that was intended to burden the smaller railroad with the responsibility to install PTC.

Accordingly, FRA is proposing to consider as passenger train main lines all tracks across the nation over which intercity or commuter passenger trains are transported. For the purposes of passenger trains, a main line is determined regardless of the amount (*i.e.,* 5 million or more gross tons annually), except where temporary rerouting may occur in accordance with §§ 236.1005(g)–(k) as further discussed below. Thus, if an intercity or commuter passenger train is transported over a track, the track requires PTC implementation and operation, regardless of whether the track is owned by a passenger railroad entity, a Class I railroad, or any smaller freight railroads, including Class II and short line railroads.

This approach, permissible under 49 U.S.C. 20157(a)(1)(C), is consistent with both FRA's understanding of congressional intent and FRA's historical safety sensitivity to regulating passenger transportation. For example, in the relatively recent final rule governing continuous welded rail, different schedules were developed for track inspection intervals associated with freight and passenger train operations. *See* 71 FR 59,677, 59,681 (Oct. 11, 2006). According to FRA, the different schedules for track inspection were developed to consider the potentially greater severity, especially in terms of loss of life, from possible future track-related passenger train accidents.

If FRA were to otherwise restrict PTC systems to passenger train main lines that are only owned by the passenger railroads, then PTC systems would only be required on 11 percent of all track used by the passenger railroads across the nation, which would mostly include the Northeast Corridor (NEC) and some passenger lines in Michigan. Considering Congress' concern with accidents involving multiple passenger fatalities, which appears to be a significant impetus for Congress' final passage of RSIA08, FRA believes that Congress did not intend in 49 U.S.C. 20157 to limit PTC system operation to this narrow passenger territory.

Nevertheless, while all passenger routes, including those over track owned by freight railroads, are automatically deemed main lines under the proposed rule, the proposed rule also provides an exception for those main lines that would not be main lines but for the existence of passenger trains and are not deemed by FRA main lines due to limited or no freight railroad operations. This exception is permissible pursuant to 49 U.S.C. 20157(i)(2)(B). The proposed procedure for such exceptions can be found under §§ 236.1011 and 236.1019, as further discussed below.

In addition to determining which tracks require PTC system implementation and operation, paragraph (b) requires such installation be performed by the ''host railroad.'' Subpart I makes a distinction between the railroad that has effective operating control over a segment of track, and a railroad that is simply passing its trains across the same segment of track. While the concept of actual ownership of the track segment plays a significant role in determining the host railroad, a PTC system may be required on a track segment that is not owned by a PTC railroad. To avoid confusion, FRA designates the host railroad as the railroad that exercises operational control of the movement of trains on the segment, irrespective of the actual ownership of the segment. This is in contrast to a tenant railroad, which is any railroad that uses a segment of track but does not exercise operational control of the movements of its trains. The terms ''host railroad'' and ''tenant railroad'' are defined as such in the definitions listed under § 235.1003.

The requirements for PTC contained in RSIA08 pertaining to freight lines define the intended route structure by reference to the presence or absence of PIH traffic and the annual gross tonnage. The law requires installation and operation of a PTC system where it (1) is part of a Class I railroad system, (2) carries at least 5 million gross tons of rail traffic, and (3) carries at least some PIH traffic. Based upon information available to FRA, and assuming a level of rail operations consistent with normal economic conditions, these requirements describe approximately 45,000 miles of freight-only territory plus almost 18,000 miles where both PIH and passengers are carried. There are another 6,000 miles of track owned by a Class I railroad and used for passenger service that would not otherwise be required to be equipped, for a total build-out of about 69,000 route miles. These lines basically describe the heart or ''core'' of the Class I freight network, albeit with some gaps.

However, the railroads carry only about 100,000 carloads of PIH products annually (approximately 0.3% of all rail traffic). Facing an extraordinary potential for tort liability associated with this traffic, the railroads have sought through various means to reduce the potential for release of these commodities through safety improvements; but they have also sought to be relieved of their common carrier obligation to carry them. The RSIA08 mandate, which entails an expenditure of billions of dollars, most of it nominally because the lines in question carry PIH, presents an additional enormous incentive for the Class I railroads to shed PIH traffic and, further, to concentrate the remaining PIH traffic on the fewest possible lines of railroad.

FRA is concerned that PIH traffic could be diverted from the rail mode. Although the risks of transporting these commodities can be reduced by product substitution, by coordination of transportation that reduces length of haul, and by other means, and although the U.S. DOT continues to support these means where feasible, for the present there are still realistic and supportable demands for transportation of these PIH commodities that implicate the national interest in a very strong way. Hazardous materials are vital to maintaining the health of the economy of the United States and are essential to the well-being of its people. These materials are used in water purification, farming, manufacturing, and other industrial applications. The need for hazardous materials to support essential services means that transportation of hazardous materials is unavoidable. There are over 20 hazardous materials considered to be PIH that are shipped by rail in tank car quantities. In 2003, over 77,000 tank car loads of PIH materials were shipped by rail.

Examples of PIH materials include anhydrous ammonia and chlorine. Anhydrous ammonia is an important source of nitrogen fertilizer for crops and is used in the continuous cycle cooling units found in various appliances and vehicles and in the production of explosives and manufacturing of nitric acid and certain alkalies, pharmaceuticals, synthetic textile fibers, plastics, and latex stabilizers. Chlorine is used as an elemental disinfectant for over 84 percent of large drinking water systems (those serving more than 10,000 people), according to the American Water Works Association. For pharmaceuticals, chlorine chemistry is essential to manufacturing 85 percent of their products. Chlorine chemistry is also used in 25 percent of all medical plastics, and 70 percent of all disposable medical applications. The single largest use of chlorine is for the production of polyvinyl chloride (PVC), which is used for building and construction materials such as siding, windows, pipes, decks and fences.

The only effective modal alternative for transporting PIH materials is by road, and for the present insufficient capacity exists in the form of suitable packages (tank trucks, intermodal tanks). Further, diversion to highways would entail significantly higher societal costs, including adverse safety trade-offs from more trucks on the highways—even before the potential for accidental release of product or further security vulnerabilities are considered.

FRA is also concerned that PIH traffic could be retained on the railroads but concentrated in such a way as to result in circuitous routings with greater exposure to derailment hazards and security threats. Although security concerns may be addressed to some extent by rerouting during periods of high alert in specified urban areas, these detour routes would inevitably be over lines not equipped with PTC systems. These are the kinds of unfavorable trade-offs that the recent amendments to PHMSA's rail security rule—based on a separate statutory mandate and developed in concert with FRA—were intended to prevent. *See, e.g.,* 73 FR 20752 (April 16, 2008); 73 FR 72182 (Nov. 26, 2008).); 49 CFR 172.820.

Finally, FRA believes that, while the presence of PIH traffic on the rail network was viewed by the Congress as a good proxy for risk sufficient to warrant PTC system installation and operation, FRA is not persuaded that it was the intent of Congress that PIH traffic be driven from the railroads or concentrated on a smaller number of lines with more circuitous routings. The final legislation constituting the RSIA08 emerged following the Chatsworth collision of September 12, 2008, which claimed 25 lives (one rail employee and 24 passengers). However, neither H.R. 2095, as initially passed by the House of Representatives on October 17, 2007, nor the Senate version of the bill passed on August 1, 2008, was limited to PIH routes. All versions of the bill, including that finally enacted, preserved FRA's ability to apply the technology to additional routes.

Although FRA recognizes that the congressional trade-offs in September 2008 were driven by the impending end of the 110th Congress, the Chatsworth accident, and the desire on the part of

some senators to see a rapid deployment of PTC technology (more rapid, in fact, than provided in either the Senate- or House-enacted versions), FRA does not believe that the Congress intended an implementation that would create substantial incentives to drive PIH traffic off of the railroads or concentrate it in such a way that large urban areas would see an increase in volume above that expected using normal, direct routing of the shipments. Accordingly, FRA proposes to use its discretion in crafting implementing regulations to preserve the presumed congressional intent. FRA does this by proposing in paragraph (b) that implementation plans required to be filed by April 16, 2010, be based on 2008 traffic levels. Although rail traffic, including PIH traffic, declined in the second half of the year, 2008 constitutes a much more ''normal'' base year than 2009 is expected to be due to the current economic conditions. It was also the year during which the Congress enacted the subject mandate.

In taking this action, FRA departs from the PTC Working Group's consensus that 2009 be used as the base year. Since the RSAC initially took up this subject, rail traffic levels have continued to plummet, and that decision now appears to be inappropriate. FRA did advise the PTC Working Group that it reserved the right to ''lock in'' the PTC route structure as of passage of RSIA08 to prevent unintended consequences. From a technical standpoint, § 236.1005(b) attempts to do just that, but with ample room for adjustment in light of normal changes in market conditions.

Paragraph (b)(2) would require that the determination of Class I freight railroad main lines required to be equipped be initially established and reported as follows using a 2008 traffic base for gross tonnage and determine the presence of PIH traffic based on 2008 shipments and routings. If increases in traffic occur that require a line to be equipped and the PTCIP has already been filed, an amendment would be required. As suggested by the RSAC, gross tonnage would be measured over two years to avoid unusual spikes in traffic driving investments inappropriately. However, if the 5 million gross tons threshold was met based on the prior two years of traffic, and PIH was added to the route, the railroad would be required to promptly file a PTCIP amendment and thereafter equip the line by the end of December 31, 2015 or within two years, whichever is later.

Once a PTC system is installed, it cannot be removed or treated as inoperative unless such discontinuance or modification is approved by FRA in accordance with § 236.1021, as discussed below. This is the case even if the track segment ceases to be defined as a main line in accordance with subpart I due to traffic pattern or consist changes, such as annual traffic levels possibly dipping below the 5 million gross ton threshold referenced in the statute and in §§ 236.1003 and 236.1005 or the rerouting of PIH traffic. This result is consistent with longstanding practice under 49 U.S.C. 20502 (see 49 CFR part 235). To the extent traffic levels decline or PIH traffic ceases prior to April 16, 2010, or during the implementation period, a railroad could ask FRA to except a line segment from the requirement that it be equipped. The railroad would need to provide estimated traffic projections for the next 5 years (*e.g.,* as a result of planned rerouting, coordinations, location of new business on the line). Where the request involves prior or planned rerouting of PIH traffic, the railroad would be required to provide a supporting analysis that takes into consideration the rail security provisions of the PHMSA rail routing rule, including any railroad-specific and interline routing impacts. *See* 49 CFR 172.820. For example, the request should include information where multiple railroad carriers may coordinate traffic, especially where there are parallel lines directing traffic in opposite directions. FRA could approve an exception if FRA finds that it would be consistent with safety and in the public interest.

Once a PTC system is required to be installed, it cannot be removed or treated as inoperative unless such discontinuance or modification is approved by FRA in accordance with § 236.1021, as discussed below. This is the case even if the track segment ceases to be defined as a main line in accordance with subpart I due to traffic pattern or consist changes, such as annual traffic levels possibly dipping below the 5 million gross ton threshold referenced in the statute and in §§ 236.1003 and 236.1005 or the rerouting of PIH traffic.

There was discussion in the PTC Working Group regarding how to handle new passenger service. Amtrak in particular suggested that FRA might consider some leeway for new intercity service that could be instituted within a short period if the sponsor (most likely a state government) requested. FRA considered this contingency but concluded that new passenger service should be adequately planned and deliberately executed with safety as its first priority. The proposal in paragraph (b) states that, after December 31, 2015, no intercity or commuter rail passenger service could continue or commence until a PTC system has been installed and made operative. FRA requests comment on this proposal and on whether a new rail passenger service commenced after April 10, 2010, but before December 31, 2015, should be permitted any leeway for installation of PTC after 2015 and, if so, what special circumstances would warrant that treatment.

Paragraph (c) provides amplifying information regarding the installation and integration of hazard detectors into PTC systems. Paragraph (c)(1) reiterates FRA's position that any hazard detectors that are currently integrated into an existing signal and train control system must be integrated into mandatory PTC systems and that the PTC system will enforce as appropriate on receipt of a warning from the detector. Paragraph (c)(2) proposes to require each PTCSP submitted by a railroad to also identify any additional hazard detector to provide warnings to the crew that a railroad may elect to install. The PTCSP must also clearly define the actions required by the crew upon receipt of the alarm or other warning or alert. FRA does not expect a railroad to install hazard detectors at every location where a hazard might possibly exist.

Paragraph (c)(3) proposes, in the case of high speed service (as described in § 236.1007 as any service operating at speeds greater than 90 mph) that FRA will require the hazard analysis to address any hazards on the route, along with a reason why additional hazard detectors are not required to provide warning and enforcement for hazards not already protected by an existing hazard detector. The hazard analysis must clearly identify the risk associated with the hazard, and the mitigations taken if a hazard detector is not installed and interfacing with a PTC system. For instance, in the past, large motor vehicles have left parallel or overhead structures and have fouled active passenger rail lines. Depending upon the circumstances, such events can cause catastrophic train accidents. Although not every such event can be prevented, detection of obstacles such as this may make it more likely that the accident could be prevented.

Under paragraph (d), FRA proposes that each lead locomotive operating with a PTC system be equipped with an operative event recorder that captures safety-critical data routed to the engineer's display that the engineer must obey, as well as the text of mandatory directives and authorized

speeds. FRA intends that this information be available in the event of an accident with a PTC-equipped system to determine root causes and the necessary actions that must be taken to prevent reoccurrence. Although FRA expects implemented PTC systems will prevent PTC-preventable accidents, in the event of system failure FRA believes it is necessary to capture available data relating to the event. Further, FRA sees value in capturing information regarding any accident that may occur outside of the control of a PTC system as it is currently designed—including the prevention of collisions with trains not equipped with PTC systems—and accidents that could otherwise have been prevented by PTC technology, but were unanticipated by the system developers, the employing railroad, or FRA.

The data may be captured in the locomotive event recorder, or a separate memory module. If the locomotive is placed in service on or after October 1, 2009, the event recorder and memory module, if used, shall be crashworthy, otherwise known as crash-hardened, in accordance with § 229.135. For locomotives built prior to that period, the data shall be protected to the maximum extent possible within the limits of the technology being used in the event recorder and memory module.

As required by the RSIA08 and by paragraph (a)(1)(iv), as noted above, a PTC system required by subpart I must be designed to prevent the movement of a train through a main line switch in the wrong position. Paragraph (e) provides amplifying information on switch point monitoring, indication, warning of misalignment, and associated enforcement. According to the statute, each PTC system must be designed to prevent ''the movement of a train through a switch left in the wrong position.'' FRA understands ''wrong position'' to mean not in the position for the intended movement of the train. FRA believes that Congress' use of the phrase ''left in the wrong position'' was primarily directed at switches in non-signaled (dark) territory such as the switch involved in the aforementioned accident at Graniteville, South Carolina. FRA also believes that, in order to prevent potential derailment or divergence to an unintended route, it is critical that all switches be monitored by a PTC system in some manner to detect whether they are in their proper position for train movements. If a switch is misaligned, the PTC system shall provide an acceptable safe state of train operations.

Prior to the statute, PTC provided for positive train separation, speed enforcement, and work zone protection. The addition of switch point monitoring and run through prevention would have eliminated the Graniteville, South Carolina accident where a misaligned switch resulted in the unintended divergence of a train operating on the main track onto a siding track and the collision of that train with another parked train on the siding. The resulting release of chlorines gas caused nine deaths and required the evacuation of the entire town for two weeks while remediation efforts were in progress.

As discussed above, FRA considered requiring PTC systems to be interconnected with each main line switch and to individually monitor each switch's point position in such a manner as to provide for a positive stop short of any misalignment condition. However, after further consideration and discussion with the PTC Working Group, FRA believes that such an approach may be overly aggressive and terribly expensive in signaled territory.

Under paragraph (e), FRA instead proposes to treat switches differently, depending upon whether they are within a wayside or cab signal system—or are provided other similar safeguards (*i.e.,* distant switch indicators and associated locking circuitry) required to meet the applicable switch position standards and requirements of subparts A–G—or are within non-signaled (dark) territory.

While a PTC system in dark territory would be required to enforce a positive stop—as discussed in more detail below—a PTC system in signaled territory would require a train to operate at no more than the upper limit of restricted speed between the associated signal, over any switch in the block governed by the signal, and until reaching the next subsequent signal that is displaying a signal indication more permissive than proceed at restricted speed.

Signaled territory includes various types of switches, including power-operated switches, hand-operated switches, spring switches, electrically-locked switches, electro-pneumatic switches, and hydra switches, to name the majority. Each type of switch poses different issues as it relates to PTC system enforcement. We look at power- and hand-operated switches as examples.

On a territory without a PTC system, if a power-operated switch at an interlocking or control point were in a condition resulting in the signal system displaying a stop indication, an approaching train would have to stop generally only a few feet from the switch, and in the large majority of cases no more than several hundred feet away from it. In contrast, in PTC territory adhering to the aforementioned overly aggressive requirement, a train would have to stop at the signal, which may be in close proximity to its associated switch, and operate at no more than the upper limit of restricted speed to that switch, where it would have to stop again. FRA believes that, since the train would be required to stop at the signal, and must operate at no more than the upper limit of restricted speed until it completely passes the switch (with the crew by rule watching for and prepared to stop short of, among other concerns, an improperly lined switch), another enforced stop at the switch would be unnecessarily redundant.

Operations using hand-operated switches would provide different, and arguably greater, difficulties and potential risks. Generally, in between each successive interlocking and control point, signal spacing along the right of way can approximately be 1 to 3 miles or more apart, determined by the usual length of track circuits and the sufficient number of indications that would provide optimal use for train operations. Each signal governs the movement through the entire associated block up to the next signal. Thus, a train approaching a hand-operated switch may encounter further difficulties since its governing signal may be much further away than one would be for a power-operated switch. If within signaled territory a hand-operated switch outside of an interlocking or control point were in a condition resulting in the signal system displaying a restricted speed signal indication, an approaching train may be required to stop before entering the block governed by the signal and proceed at restricted speed, or to otherwise reduce its speed to restricted speed as it enters the block governed by the signal, and be operated at restricted speed until the train reaches the next signal displaying an indication more permissive than proceed at restricted speed, including while passing over any switch within the block. The governing signal, however, may be anywhere from a few feet to more than a mile from the hand-operated switch. For instance, if a signal governs a 3 mile long block, and there is a switch at 1.8 miles after passing the governing signal (stated in advance of the signal), and that switch is misaligned, the train would have to travel that 1.8 miles at restricted speed. Even if the train crew members were able to normal the misaligned switch, they would need to remain at restricted

speed at least until the next signal (absent an upgrade of a cab signal indication).

In signaled territory, to require a PTC system to enforce a positive stop of an approaching train at each individual switch that is misaligned would be an unnecessary burden on the industry, particularly since movement beyond the governing signal would be enforced by the PTC system to a speed no more than the upper limit of restricted speed. Accordingly, in signaled territory, FRA proposes in paragraph (e)(1) to require a PTC system to enforce the upper limit of restricted speed through the block. By definition, at restricted speed, the locomotive engineer must be prepared to stop within one-half the range of vision short of any misaligned switch or broken rail, *etc.,* not to exceed 15 or 20 miles per hour depending on the operating rule of the railroad. Accordingly, if a PTC system is integrated with the signal system, and a train is enforced by the PTC system to move at restricted speed past a signal displaying a restricted speed indication, FRA feels comfortable that the PTC system will meet the statutory mandate of preventing the movement of the train through the switch left in the wrong position by continuously displaying the speed to be maintained (*i.e.,* restricted speed) and by enforcing the upper limit of the railroads' restricted speed rule (but not to exceed 20 mph). While this solution would not completely eliminate human factors associated with movement through a misaligned switch, it would significantly mitigate the risk of a train moving through such a switch and would be much more cost effective.

Moreover, it would be cost prohibitive to require the industry to individually equip each of the many thousands of hand-operated switches with a wayside interface unit (WIU) necessary to interconnect with a PTC system in order to provide a positive stop short of any such switch that may be misaligned. Currently each switch in signaled territory has its position monitored by a switch circuit controller (SCC). When a switch is not in its normal position, the SCC opens a signal control circuit to cause the signal governing movement over the switch location to display its most restrictive aspect (usually red). A train encountering a red signal at the entrance to a block will be required to operate at restricted speed through the entire block, which can be several miles in length depending on signal spacing. The signal system is not capable of informing the train crew which switch, if any, in the block may be in an improper position since none of switches are equipped with an independent WIU. There could be many switches within the same block in a city or other congested area. Thus, there is a possibility that one or more switches may be not in its proper position and the signal system is unable to transmit which switch or switches are not in normal position. The governing signal could also be displaying a red aspect on account of a broken rail, broken bond wire, broken or wrapped line wire, bad insulated joint, bad insulated switch or gage rods, or other defective condition.

FRA believes that requiring a PTC system to enforce the upper limit of restricted speed in the aforementioned situations is statutorily acceptable. The statute requires each PTC system to prevent ''the movement of a train through a switch left in the wrong position.'' Under this statutory language, the railroad's intended route must factor into the question of whether a switch is in the ''wrong'' position. In other words, in order to determine whether a switch is in the ''wrong position,'' we must know the switch's ''right position.'' The ''right position'' is determined by the intended route of the railroad. Thus, when determining whether a switch is in the wrong position, it is necessary to know the railroad's intended route and whether the switch is properly positioned to provide for the train to move through the switch to continue on that route. The intended route is normally determined by the dispatcher.

Under the proposed rules, when a switch is in the wrong position, the PTC system must have knowledge of that information, must communicate that information to the railroad (*e.g.,* the locomotive engineer or dispatcher), and must control the train accordingly. Once the PTC system or railroad has knowledge of the switch's position, FRA expects the position to be corrected in accordance with part 218 before the train operates through the switch. *See, e.g.,* §§ 218.93, 218.103, 218.105, 218.107.

If the PTC system forces the train to move at no more than the upper limit of restricted speed, the railroad has knowledge that a misaligned switch may be within the subject block, and the railroad by rule or dispatcher permission then makes the decision to move through the switch (*i.e.,* the railroad's intent has changed as indicated by rule or dispatcher instructions), the switch is no longer in the ''wrong position.'' The RSAC PTC Working Group was unanimous in concluding that these arrangements satisfy the safety objectives of RSIA08. Utilization of the signal system to detect misaligned switches and facilitate safe movements also provides an incentive to retain existing signal systems, with substantial additional benefits in the form of broken rail detection and detection of equipment fouling the main line.

Paragraph (e)(2) addresses movements over switches in dark territory and under conditions of excessive risk, even if in block signal territory. In dark territory, by definition, there are no signals available to provide any signal indication or to interconnect with the switches or PTC system. Without the benefit of a wayside or cab signal system, or other similar system of equivalent safety, the PTC system will have no signals to obey. In such a case, the PTC system may be designed to allow for virtual signals, which are waypoints in the track database that would correspond to the physical location of the signals had they existed without a switch point monitoring system. Accordingly, paragraph (e)(2)(i) proposes to require that in dark territory where PTC systems are implemented and governed by this subpart, the PTC system must enforce a positive stop for each misaligned switch whereas the lead locomotive must be stopped short of the switch to preclude any fouling of the switch. Once the train stops, the railroad will have an opportunity to correct the switch's positioning and then continue its route as intended.

Unlike in signaled territory, FRA expects that on lines requiring PTC in dark territory, each switch will be equipped with a WIU to monitor the switch's position. A WIU is a device that aggregates control and status information from one or more trackside devices for transmission to a central office and/or an approaching train's onboard PTC equipment, as well as disaggregating received requests for information, and promulgates that request to the appropriate wayside device. Most of the switches in dark territory are hand-operated with a much smaller amount of them being spring and hydra switches. In dark territory, usually none of the switches have their position monitored by a SCC and railroads have relied on the proper handling of these switches by railroad personnel. When it is necessary to throw a main line switch from normal to reverse, an obligation arises under the railroad's rules to restore the switch upon completion of the authorized activity. Switch targets or banners are intended to provide minimal visual indication of the switch's position, but in the typical case trains are not required to operate at a speed permitting them to stop short of open switches. As evidenced by the issuance of Emergency

Order No. 24 and the subsequent Railroad Operating Rules Final Rule (73 FR 8442 (Feb. 13, 2008)), proper handling of main line switches cannot be guaranteed in every case. However, now with the implementation and operation of PTC technology, if a switch is not in the normal position, that information will be transmitted to the locomotive. The PTC system will then know which switch is not in the normal position and require a positive stop at that switch location only.

In the event that movement through a misaligned switch would result in an unacceptable risk, whether in dark or signaled territory, paragraph (e)(2)(ii) proposes to require the PTC system to enforce a positive stop on each train before it crosses the switch in the same manner as described above for trains operating in dark, PTC territory. FRA acknowledges that regardless of a switch's position, and regardless of whether the switch is in dark or signaled territory, movement through certain misaligned switches—even at low speeds—may still create an unacceptable risk of collision with another train.

FRA understands the term ''unacceptable risk'' to mean risk that cannot be tolerated by the managing activity. It is a type of identified risk that must be eliminated or controlled. For instance, such an unacceptable risk may exist with a hand-operated crossover between two main tracks, between a main track and a siding or auxiliary track, or with a hand-operated switch providing access to another subdivision or branch line. The switches mentioned in (e)(2)(ii) are in locations where, if the switch is left lined in the wrong position, a train would be allowed to traverse through the crossover or turnout and potentially into the path of another train operating on an adjoining main track, siding, or other route. Even if such switches were located within a signaled territory, the signal governing movements over the switch locations, for both tracks as may be applicable, would be displaying their most restrictive aspect (usually red). This restrictive signal indication would in turn allow both trains to approach the location at restricted speed where one or both of the crossover switches are lined in the reverse position. Since the PTC system is not capable of actually enforcing restricted speed other than its upper limits, the PTC system would enforce a 15 or 20 mile per hour speed limit dependent upon the operating rules of the railroad. However, there is normally up to as much as a 5 mile per hour tolerance allowed for each speed limit before the PTC system will actually enforce the applicable required speed. Thus, in reality, the PTC system would not enforce the restricted speed condition until each train obtained a speed of up to 25 miles per hour. In this scenario, it is conceivable that two trains both operating at a speed of up to 25 miles per hour could collide with each other at a combined impact speed (closing speed) of up to 50 miles per hour. While these examples are provided in the rule text, they are merely illustrative and do not limit the universe of what FRA may consider an unacceptable risk for the purpose of paragraph (e). FRA emphasizes that FRA maintains the final determination as to what constitutes acceptable or unacceptable risk in accordance with paragraph (e)(2)(ii).

The PTC system must also enforce a positive stop short of any misaligned switch on a PTC controlled siding in dark territory where the allowable track speed is in excess of 20 miles per hour. Sidings are used for meeting and passing trains and where those siding movements are governed by the PTC system, safety necessitates the position of the switches located on them to be monitored in order to protect train movements operating on the siding. Conversely, on signaled sidings, train movements are governed and protected by the associated signal indications, track circuits, and monitored switches, none of which are present in dark territory.

Paragraph (e)(3) provides that the PTCSP may include a safety analysis for PTC system enforcement associated with switch position and an identification and justification of any alternate means of protection other than that provided in this section shall be identified and justified. FRA recognizes that in certain circumstances this flexibility may allow the reasonable use of a track circuit in lieu of individually monitored switches.

Paragraph (e)(4) provides amplifying information regarding existing standards of subparts A through G related to switches, movable-point frogs, and derails in the route governed that are equally applicable to PTC systems unless otherwise provided in a PTCSP approved under this subpart. This paragraph explains that the FRA required and accepted railroad industry standard types of components used to monitor switch point position and how those devices are required to function. This paragraph allows for some alternative method to be used to accomplish the same level of protection if it is identified and justified in a PTCSP approved under this subpart.

Paragraph (f) provides amplifying information for determining whether a PTC system is considered to be configured to prevent train-to-train collisions, as required under paragraph (a). FRA will consider the PTC system as providing the required protection if the PTC system enforces the upper limits of restricted speed. These criteria will allow following trains to pass intermediate signals displaying a restricting aspect and will allow for the issuance of joint mandatory directives.

Where a wayside signal displays a ''Stop,'' ''Stop and Proceed,'' or ''Restricted Proceed'' indication, paragraph (f)(1)(i) requires the PTC system to enforce the signal indication accordingly. In the case of a ''Stop'' or ''Stop and Proceed'' indication, the train will be brought to a stop prior to passing the signal displaying the indication. The train may then proceed at 15 or 20 miles per hour, as applicable according to the host railroad's operating rule(s) for restricted speed. In the case of a ''Restricted Proceed'' indication, the train would be allowed to pass the signal at 15 or 20 miles per hour. In either event, the speed restriction would be enforced until the train passes a more favorable signal indication. In dark territory where trains operate by mandatory directive, the PTC system would be expected to enforce the upper limit of restricted speed on a train when the train was allowed into a block already occupied by another preceding train traveling in the same direction. FRA would expect each PTC system to function in this way and that each railroad will test each system to ensure such proper functioning.

Paragraphs (g) through (k) all concern situations where temporary rerouting may be necessary and would affect application of the operational rules under subpart I. While the proposed rule attempts to reduce the opportunity for PTC and non-PTC trains to co-exist on the same track, FRA recognizes that this may not always be possible, especially when a track segment is out of service and a train must be rerouted in order to continue to destination. Accordingly, paragraph (g) allows for temporary rerouting of traffic between PTC equipped lines and lines not equipped with PTC systems. FRA anticipates two situations—emergencies and planned maintenance—that would justify such rerouting.

Paragraph (g) provides the preconditions and procedural rules to allow or otherwise effectuate a temporary rerouting in the event of an emergency or planned maintenance that would prevent usage of the regularly used track. Historically, FRA has dealt

with temporary rerouting on an ad hoc basis. For instance, on November 12, 1996, FRA granted UP, under its application RS&I–AP–No. 1099, conditional approval for relief from the requirements of § 236.566, which required equipping controlling locomotives with an operative apparatus responsive to all automatic train stop, train control, or cab signal territory equipment. The conditional approval provided for ''detour train movements necessitated by catastrophic occurrence such as derailment, flood, fire, or hurricane'' on certain listed UP territories configured with automatic cab signals (ACS) or automatic train stop (ATS). Ultimately, the relief would allow trains not equipped with the apparatus required under § 236.566 to enter those ACS and ATS territories. However, the relief was conditional upon establishing an absolute block in advance of each train movement—as prescribed by General Code of Operating Rules (GCOR) 11.1 and 11.2—and notifying the applicable FRA Regional Headquarters. The detour would only be permissible for up to seven days and FRA could modify or rescind the relief for railroad non-compliance.

On February 7, 2006, that relief was temporarily extended to include defined territory where approximately two months of extensive track improvements were necessary. Additional conditions for this relief included a maximum train speed of 65 miles per hour and notification to the FRA Region 8 Headquarters within 24 hours of the beginning of the non-equipped detour train movements and immediately upon any accident or incident. On February 27, 2007, FRA provided similar temporary relief for another three months on the same territory.

While the aforementioned conditional relief was provided on an ad hoc basis, FRA feels that codifying rules regulating temporary rerouting involving PTC system track or locomotive equipment is necessary due to the potential dangers of allowing mixed PTC and non-PTC traffic on the same track and the inevitable increased presence of PTC and PTC-like technologies. Moreover, FRA believes that the subject railroads and FRA would benefit from more regulatory flexibility to work more quickly and efficiently to provide for temporary rerouting to mitigate the problems associated with emergency situations and infrastructure maintenance.

Under the proposed rule, FRA is providing for temporary rerouting of non-PTC trains onto PTC track and PTC trains onto non-PTC track. A train will not be considered rerouted for purposes of the conditions set forth in this section if it operates on a PTC line that is other than its ''normal route,'' which is equipped and functionally responsive to the PTC system over which it is subsequently operated, or if it is a non-PTC train (not a passenger train or a freight train having any PIH materials) operating on a non-PTC line that is other than its ''normal route.''

Paragraph (g) effectively provides temporary civil penalty immunity from various applicable requirements of this subpart, including provisions under subpart I relating to lead locomotives, similar to how waivers from FRA have provided certain railroads immunity from § 236.566. FRA seeks comments on what other requirements under part 236 should also be included.

FRA expects that emergency rerouting will require some flexibility in order to respond to circumstances outside of the railroad's control—most notably changes in the weather, vandalism, and other unexpected occurrences—that would result in potential loss of life or property or prevent the train from continuing on its normal route. While paragraph (g) lists a number of possible emergency circumstances, they are primarily included for illustrative purposes and are not a limiting factor in determining whether an event rises to an emergency. For instance, FRA would also consider allowing rerouting in the event use of the track is prevented by vandalism or terrorism. While these events are not the primary reasons FRA proposes paragraph (g) to allow rerouting, FRA recognizes that they may fall outside of the railroad's control.

In the event of an emergency that would prevent usage of the track, temporary rerouting may occur instantly by the railroad without immediate FRA notice or approval. By contrast, the vast majority of maintenance activities can be predicted by railroad operators. While the proposed rule provides for temporary rerouting for such activities, the lack of exigent circumstances does not require the allowance of instantaneous rerouting without an appropriate request and, in cases where the request is for rerouting to exceed 30 days, FRA approval. Accordingly, under paragraph (g), procedurally speaking, temporary rerouting for emergency circumstances will be treated differently than temporary rerouting for planned maintenance. While FRA continues to have an interest in monitoring all temporary rerouting to ensure that it is occurring as contemplated by FRA and within the confines of the rule, the timing of FRA notification, and the approval procedures, reflect the aforementioned differences.

When an emergency circumstance occurs that would prevent usage of the regularly used track, and would require temporary rerouting, the subject railroad must notify FRA within one business day after the rerouting commences. To provide for communicative flexibility in emergency situations, the proposed rule provides for such notification to be made in writing or by telephone. FRA proposes that written notification may be accomplished via overnight mail, e-mail, or facsimile. In any event, the railroad should take the steps necessary for the method of notification selected to include confirmation that an appropriate person actually on duty with FRA receives the notification and FRA is duly aware of the situation. FRA is considering whether to employ the National Response Center (NRC) for such communications, whereas notification may be made to the NRC clearly describing the actions taken and providing the railroad's point of contact so that FRA may follow up for additional information if necessary. While the NRC provides full time telephonic services, 24 hours a day, 7 days a week, 365 days a year, the light volume of calls FRA expects for rerouting purposes under this section may make the option cost prohibitive. FRA is currently reviewing this option and seeks comments on this issue.

While telephone notification may provide for easy communications by the railroad, a mere phone call would not provide for documentation of information required under paragraph (g). Moreover, if for some reason the phone call is made at a time when the designated telephone operator is not on duty or if the caller is only able to leave a message with the FRA voice mail system, the possibility exists that the applicable FRA personnel would not be timely notified of the communication and its contents. Thus, while not in the proposed rules, FRA is considering requiring any telephonic notification performed in accordance with paragraph (g) to be followed up with written notification within 48 hours. FRA seeks comments on this issue.

FRA is also considering using particular contact mail and e-mail addresses and telephone and facsimile numbers to be used exclusively for the notifications required by paragraph (g) as they relate to emergency rerouting. Otherwise, if a railroad would notify a particular member of the FRA staff in writing, and that staff member is unavailable (*e.g.,* on annual or sick leave, working in the field, or otherwise indisposed), FRA would not be timely notified of the emergency situation and the rerouting actions that are occurring.

If there is a singular contact address for each form of written notification, FRA could attempt to provide continuous personnel assignment to monitor incoming notifications. FRA seeks comments on this issue. FRA also seeks comments on the possible need to include requirements relating to confirmation of receipt of notifications required under paragraph (g).

Emergency rerouting can only occur without FRA approval for fourteen (14) consecutive calendar days. If the railroad requires more time, it must make a request to the Associate Administrator. The request must be made directly to the Associate Administrator and separately from the initial notification sometime before the 14-day emergency rerouting period expires. Unless the Associate Administrator notifies the railroad of his or her approval before the end of the allowable emergency rerouting timeframe, the relief provided by paragraph (g) will expire at the end of that timeframe.

While a mere notification is necessary to commence emergency rerouting, a request must be made, with subsequent FRA approval, to perform planned maintenance rerouting. The relative predictability of planned maintenance activities allows railroads to provide FRA with much more advance request of any necessary rerouting and allows FRA to review that request. FRA proposes that the request must be made at least 10 calendar days before the planned maintenance rerouting commences.

To ensure a retrievable record, the request must be made in writing. It may be submitted to FRA by fax, e-mail, or courier. Because of security protocols placed in effect after 9/11, regular mail undergoes irradiation to ensure that any pathogens have been destroyed prior to delivery. The irradiation process adds significant delay to FRA's receipt of the document, and the submitted document may be damaged due to the irradiation process. The lack of emergency circumstances makes telephonic communication less necessary and less preferable. Like notifications for emergency rerouting, the request for planned rerouting must include the number of days that the rerouting should occur. If the planned maintenance will require rerouting up to 30 days, then the request must be made with the Regional Administrator. If it will require rerouting for more than 30 days, then the request must be made with the Associate Administrator. These longer time periods reflects FRA's opportunity to review and approve the request. In other words, since FRA expects that the review and approval process will provide more confidence that a higher level of safety will be maintained, the rerouting period for planned maintenance activities may be more than the 14 days allotted for emergency rerouting.

Regardless of whether the temporary rerouting is the result of an emergency situation or planned maintenance, the communication to FRA required under paragraph (g) must include the information listed under paragraph (i). This information is necessary to provide FRA with context and details of the rerouting. To attempt to provide railroads with the flexibility intended under paragraph (g), and to attempt to prevent enforcement of the rules from which the railroad should be receiving relief, FRA must be able to coordinate with its inspectors and other personnel. This information may also eventually be important to FRA in developing statistical analyses and models, reevaluating its rules, and determining the actual level of danger inherent in mixing PTC and non-PTC traffic on the same tracks.

For emergency rerouting purposes, the information is also necessary for FRA to determine whether it should order the railroad or railroads to cease rerouting or provide additional conditions that differ from the standard conditions specified in paragraph (i). FRA recognizes the importance of allowing temporary rerouting to occur automatically in emergency circumstances. However, FRA must also maintain its responsibility of ensuring that such rerouting occurs lawfully and as intended by the rules. Accordingly, the proposed rules provide for the opportunity for FRA to review the information required by paragraph (g) to be submitted in accordance with paragraph (i) and order the railroad or railroads to cease rerouting if FRA finds that such rerouting is not appropriate or permissible in accordance with the requirements of paragraphs (g) through (i), and as may be so directed in accordance with paragraph (k), as discussed further below.

For rerouting due to planned maintenance, the information required under paragraph (i) is equally applicable and will be used to determine whether the railroad should not reroute at all. If the request for planned maintenance is for a period of up to 30 days, then the request and information must be sent in writing to the Regional Administrator of the region in which the temporary rerouting will occur. While such a request is self-executing—meaning that it will automatically be considered permissible if not otherwise responded to—the Regional Administrator may prevent the temporary rerouting from starting by simply notifying the railroad or railroads that its request is not approved. The Regional Administrator may otherwise provide conditional approval, request that further information be supplied to the Regional Administrator or Associate Administrator, or disapprove the request altogether. If the railroad still seeks to reroute due to planned maintenance activities, it must provide the Regional Administrator or Associate Administrator, as applicable, the requested information. If the Regional Administrator requests further information, no planned maintenance rerouting may occur until the information is received and reviewed and the Regional Administrator provides his or her approval. Likewise, no planned maintenance rerouting may occur if the Regional Administrator disapproves of the request. If the Regional Administrator does not provide notice preventing the temporary rerouting, then the planned maintenance rerouting may begin and occur as requested. However, once the planned maintenance rerouting begins, the Regional Administrator may at any time order the railroad or railroads to cease the rerouting in accordance with paragraph (k).

Requests for planned maintenance rerouting exceeding 30 days, however, must be made to the Associate Administrator and are not self-executing. No such rerouting may occur without Associate Administrator approval, even if the date passes on which the planned maintenance was scheduled to commence. Under paragraph (h)(3), like the Regional Administrator, the Associate Administrator may provide conditional approval, request further information, or disapprove of the request to reroute. Once approved rerouting commences, the Associate Administrator may also order the rerouting to cease in accordance with paragraph (k).

Paragraph (j) requires that, once temporary rerouting commences, regardless of whether it is for emergency or planned maintenance purposes, the track segments upon which the train will be rerouted must have an absolute block established in advance of each rerouted train movement and that each rerouted train movement shall not exceed 59 miles per hour for passenger and 49 miles per hour for freight. FRA requests comment on whether these speed restrictions should be limited to trains actually transporting PIH materials or intercity or commuter passengers and whether a higher limit

should be provided on cab signal territory where the detoured train is led by a locomotive equipped with operative cab signals. FRA also requests comment on whether the more stringent requirements of § 236.1029 (trains failed en route on PTC lines) should apply. Finally, FRA requests comment on the extent to which the host railroad's PTCSP might provide for alternative safety measures.

Moreover, as referenced in paragraph (g) as it applies to both emergency and planned maintenance circumstances, the track upon which FRA expects the rerouting to occur would require certain mitigating protections listed under paragraph (j) in light of the mixed PTC and non-PTC traffic. While FRA purposefully intends paragraph (j) to apply similarly to § 236.567, FRA recognizes that § 236.567 does not account for the statutory mandates of interoperability and the core PTC safety functions. Accordingly, paragraph (j) must be more restrictive.

Section 236.567, which applies to territories where ''an automatic train stop, train control, or cab signal device fails and/or is cut out en route,'' requires trains to proceed at either restricted speed or, if an automatic block signal system is in operation according to signal indication, at no more than 40 miles per hour to the next available point of communication where report must be made to a designated officer. Where no automatic block signal system is in use, the train shall be permitted to proceed at restricted speed or where an automatic block signal system is in operation according to signal indication but not to exceed medium speed to a point where absolute block can be established. Where an absolute block is established in advance of the train on which the device is inoperative, the train may proceed at not to exceed 79 miles per hour. Paragraph (j) utilizes that absolute block condition, which more actively engages the train dispatcher in managing movement of the train over the territory (in both signaled and non-signaled territory). Recognizing that re-routes under this section will occur in non-signaled territory, the maximum authorized speeds associated with such territory are used as limitations on the speed of re-routed trains. FRA agrees with the comments of labor representatives in the PTC Working Group who contend that the statutory mandate alters to some extent what would otherwise be considered reasonable for these circumstances. FRA welcomes comments on whether restrictions associated with re-routing should vary depending on whether the actual train in question is a passenger train or includes cars containing PIH materials.

It should be noted that this paragraph (j) was added by FRA after further consideration of this issue and was not part of the PTC Working Group consensus. FRA believes that special precautions may be appropriate given the heightened safety expectations suggested by the statutory mandate. Comment is requested on the appropriateness of these restrictions, including any impact on other rail traffic.

Paragraph (k), as previously noted, provides the Regional Administrator with the ability to order the railroad or railroads to cease rerouting operations that were requested for up to 30 days. The Associate Administrator may order a railroad or railroads to cease rerouting operations regardless of the length of planned maintenance rerouting requested. FRA believes this is an important measure necessary to prevent rerouting performed not in accordance with the rules and FRA's expectations based on the railroad's communications and to ensure the protection of train crews and the public. However, FRA is confident that in the vast majority of cases railroads will utilize the afforded latitude reasonably and only under necessary circumstances.

FRA expects each host railroad to develop a plan to govern operations in the event temporary rerouting is performed in accordance with this section. Thus, as noted further below in § 236.1015, FRA proposes each PTCSP to include a plan accounting for such rerouted operations.

Section 236.1006 Equipping Locomotives Operating in PTC Territory

The PTC Working Group discussed at great length the issues related to operation of PTC-equipped locomotives, and locomotives not equipped with PTC onboard apparatus, over lines equipped with PTC. The PTC Working Group recognized that the typical rule with respect to train control territory is that all controlling locomotives must be equipped and operative (*see* § 236.566). It was also noted in the discussion that the Interstate Commerce Commission (FRA's predecessor agency in the regulation of this subject matter) and FRA have provided some relief from this requirement in discrete circumstances where safety exposure was considered relatively low and the hardship associated with equipping additional locomotives was considered substantial.

The ASLRRA noted that its member railroads conduct limited operations over Class I railroad lines that will be required to be equipped with PTC systems in a substantial number of locations. These operations are principally related to the receipt and delivery of carload traffic in interchange. The small railroad service extends onto the Class I railroad track in order to hold down costs and permit both the small railroad and the Class I railroad to retain traffic that might be priced off the railroad if the Class I had to dispatch a crew to pick up or place the cars. This, in turn, supports competitive transportation options for small businesses, including marginal small businesses in rural areas.

The ASLRRA advocated an exception that would permit the trains of its members and other small railroads to continue use of existing trackage rights and agreements without the necessity for equipping their locomotives with PTC. They suggested that any incremental risk be mitigated by requiring that such trains proceed subject to the requirement for an absolute block in advance (similar to operating rules consistent with § 236.567 applicable to trains with failed onboard train control systems). This position was consistently opposed both by the rail labor organizations and the Class I railroads. These organizations took the position that all trains should be equipped with PTC in order to gain the benefits sought by the congressional mandate and to provide the host railroad the full benefit of its investment in safety. Informal discussions suggested that Class I railroads might offer technical or financial assistance to certain small railroads in equipping their locomotives, but that this would, of course, be done based on the corporate interest of the Class I railroad.

In the PTC Working Group and in informal discussions around its activities, Class I railroads indicated that they intended to take a strong position against non-equipped trains operating on their PTC lines, and that in order to enforce this restriction fairly they understood that they would need to equip their own locomotives, including older road switchers that might venture onto PTC-equipped lines only occasionally. However, during these discussions, FRA was not able to develop a clear understanding regarding, outside the scope of FRA regulations, the extent to which the Class I railroads under previously executed private agreements enjoy the effective ability to enforce a requirement that all trains be equipped. FRA presumes for purposes of this proposal that there will be circumstances rooted

in previously executed private agreements under which the Class I railroad would be entitled to require the small railroad to use a controlling locomotive equipped with PTC as a condition of operating onto the property. FRA wishes to emphasize that, in making this regulatory proposal, FRA does not intend to influence the exercise of private rights or to suggest that public policy would disfavor an otherwise legitimate restriction on the use of unequipped locomotives on PTC lines. Rather, this proposal is intended to explore limited exceptions that might be acceptable from the point of view of safety, and helpful from the point of view of the public interest in rail service, where it might be compatible with prior rights of the railroads involved. FRA also notes that, in the absence of clear guidance on this issue, a substantial number of waiver requests could be expected that would have to be resolved without the benefit of decisional criteria previously examined and refined through the rulemaking process.

Paragraph (a) proposes that, as general rule, all trains operating over PTC territory must be PTC-equipped. In other words, paragraph (a) would require that each lead locomotive to be operated with a PTC onboard apparatus if it is controlling a train operating on a track equipped with a PTC system in accordance subpart I. The PTC onboard apparatus should operate and function in accordance with the PTCSP governing the particular territory. Accordingly, it must successfully and sufficiently interoperate with the host railroad's PTC system.

Generally, the four parts of each PTC system are office, wayside, communications, and onboard components. FRA recognizes that a PTC onboard apparatus for a lead locomotive owned and operated by one railroad may not be part of the PTC system upon which the locomotive operates. For example, a Class II railroad lead locomotive equipped with a PTC onboard apparatus may operate on a Class I railroad's PTC line. Throughout this rule, the use of the term ''PTC system,'' depending upon its context, usually refers to the host railroad's PTC system, and not the tenant railroad's lead locomotive. When using the term, PTC onboard apparatus, however, FRA intends to cover all such mobile equipment, regardless of whether it on a locomotive owned or controlled by a host or tenant railroad.

Under proposed § 236.1006, FRA may enforce paragraph (a). Proposed paragraphs (b) and (c), however, contains a series of proposed qualifications and exceptions to paragraph (a).

First, it is understood that during the time PTC technology is being deployed to meet the statutory deadline of December 31, 2015, there will be movements over PTC lines by trains with lead locomotives not equipped with a PTC onboard apparatus. In general, Class I railroad locomotives are used throughout the owning railroad's system and, under shared power agreements, on other railroads nationally. FRA anticipates that the gradual equipping of locomotives—which will occur at a relatively small number of specialized facilities and which will require a day or two out of service as well as time in transit—will extend well into the implementation period that ends on December 31, 2015. It will not be feasible to tie locomotives down to PTC lines, and the RSAC stakeholders fully understood that point. Labor organizations did urge that railroads make every effort to use equipped locomotives as controlling units, and FRA believes that in general, railroads will do so in order to obtain the benefits of their investment.

Second, FRA has included a transitional provision, related to PTC apparatus that fails upon attempted initialization, specifically intended to encourage placement of PTC-equipped locomotives on the point during the period when reliability may be an issue. This provision would allow a stated, declining percentage of locomotives equipped with PTC to be dispatched even if the onboard apparatus fails. Although FRA agrees with the objective of rail labor's suggestion for ''consist management'' that puts equipped locomotives on the point, FRA also recognizes that a number of factors related to the age and condition of locomotives may influence this decision. Further, in the early stages of implementation, requiring that power be switched if initialization fails could result in significant train delays and contribute to congestion in yards and terminals. Some ''slack'' in the system will be required to implement PTC intelligently and successfully. Of course, if FRA determines during implementation that good faith efforts are not being made to take advantage of PTC-equipped locomotives, FRA could step in with more prescriptive requirements after providing notice and an opportunity for comment.

Recognizing that matching PTC lines with PTC-equipped controlling locomotives will be a key factor in obtaining the benefits of this technology in the period up to December 31, 2015, FRA requests comments on whether PTC Implementation Plans should be required to include power management elements describing how this will be accomplished to the degree feasible.

Third, the section provides a cross-reference to § 236.1029 pertaining to PTC onboard apparatus failing en route.

Fourth, this provision proposes exceptions for trains operated by Class II and III railroads, including tourist or excursion railroads. The exceptions are limited to lines not carrying intercity or commuter passenger service, except where the Class I freight railroad and the passenger railroad have requested an exception in the PTC Implementation Plan's main line track exception addendum (MTEA) in accordance with § 236.1019, as further discussed below, and FRA has approved that element of the plan.

FRA has considered whether to provide an exception to requiring each Class II and III railroad locomotive to be equipped with a PTC onboard apparatus when operating over passenger routes to be equipped with a PTC system, but FRA has not been able to define conditions that would apparently be suitable in every case. FRA is open to consideration of exceptions within the context of a PTC Implementation Plan. To the extent that the host Class I or passenger railroad would need to be supportive of the exception, FRA recognizes that options may be foreclosed prior to FRA consideration. However, railroads have historically exercised substantial control of operations over track that they own or dispatch, and in this case those interests significantly parallel the apparent intent of the Congress to achieve a high level of safety in mixed freight and passenger operations. If FRA were to handle exceptions through PTC Implementation Plans, FRA seeks comments on how that should be accomplished. FRA also seeks comments on whether there should be an assumption that the lead locomotives not equipped with PTC onboard apparatus' on four unequipped Class II or III railroad trains will be permitted daily on a segment of PTC-equipped track and that variances from that are permitted in a PTC Implementation Plan. If so, FRA questions whether that should be subject to the agreement of both railroads. If agreement by the Class II or III railroad is not required, FRA seeks comments on what assurance there would be that the Class I railroad would not effectively shut out the Class II or III railroad's operation.

FRA recognizes that most of the justifications stated for these proposed exceptions pertain to short movements for interchange that would constitute a small portion of the movements over the

PTC-equipped line. The accident/incident data show that the risk attendant upon these movements is small. A review of the last seven years of accident data covering 3,312 accidents that were potentially preventable by PTC showed that there were only two of those accidents which involved a Class I railroad's train and a Class II or III railroad's train. FRA believes that the low level of risk revealed by these statistics justifies an exception for Class II and III railroad trains traversing a PTC-equipped line for a relatively short distance. FRA notes that the cost of equipping those trains would be high when viewed in the context of the financial strength of the Class II or III railroad and the marginal safety benefits would be relatively low in those cases where a small volume of traffic is moved over the PTC-equipped line.

FRA also believes that it is clearly desirable to eventually have each train using a PTC-equipped line to have a lead locomotive equipped with a PTC onboard apparatus. However, FRA seeks comments on the length of time the exception should last and a justification of that length of time. Other considerations aside, FRA seeks comments on whether FRA should not require a Class II or III railroad locomotive used on a PTC-equipped line to be equipped with PTC when it is rebuilt or replaced (*i.e.,* when the cost of equipping a locomotive is lowest). In other cases, the Class II or III railroad has dedicated locomotives serving the line to be equipped with PTC. From the facts presently available to FRA, it appears to be appropriate for those locomotives to be equipped with PTC. Moreover, FRA is aware of other cases where Class II and III railroads have rather more extensive operations over Class I railroad lines; and, in these cases, the risks incurred could be more substantial. Further, in some of these cases the smaller railroads are aligned with the Class I railroads over which they operate or may even be under common ownership and control. For purposes of prompting a more complete public dialogue on this issue, FRA is proposing to limit unequipped movements by any single Class II or III railroad to not more than 4 trains per day over any given track segment on a PTC-equipped line. A train moving from the small railroad to the point of interchange and back within the same calendar day would count as two trains.

To the extent the movements in question do not exceed 20 miles, this exception would be available at least until FRA next considered the issue of PTC deployment. Information available to FRA indicates that this would accommodate a substantial majority of the affected operations. FRA questions and seeks comments as to whether this latitude should be available if one or more locomotives subsequently acquired by the small railroad were equipped for PTC.

To the extent the movements in question exceed 20 miles, the exception would be available only until December 31, 2020. In some cases, small railroads operate over Class I railroad tracks for over one hundred miles, and these operations may be integral to their service plans (*e.g.,* permitting the small railroad to reach lines branching off from the Class I railroad's route structure for which the smaller railroad provides local service). FRA recognizes that in these circumstances the smaller railroads would face overwhelming competition for supplier attention and significant challenges related to pricing that will attend the initial period of implementation. Accordingly, FRA proposes to provide for these railroads to equip the necessary locomotives with additional time beyond the statutory deadline that applies to Class I railroads. In conjunction with this latitude, FRA would ask for progress reports to focus the attention of the railroads' management teams and to ensure that the agency could not be presented with unreasonable demands for further extensions at the end of the extended implementation period.

FRA recognizes that small railroads carry a wide variety of commodities, including PIH traffic. FRA invites comments on whether the small railroad exceptions for freight operations that FRA is proposing should be altered if the small railroad is transporting PIH traffic on PTC equipped track through a densely populated area. Commenters are requested to detail any alternative standards they believe should be adopted to address such a situation.

Section 236.1007 Additional Requirements for High Speed Service

Since the early 1990s, there has been an interest centered around designated high speed corridors for the introduction of high speed rail, and a number of States have made progress in preparing rail corridors through safety improvements at highway-rail grade crossings, investments in track structure, and other areas. FRA has administered limited programs of assistance using appropriated funds. With the passage of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115 (2009), which provides $8 billion in capital assistance for high speed rail corridors and intercity passenger rail service, and the President's announcement in April 2009 of a *Vision for High Speed Rail in America,* FRA expects those efforts to increase considerably. FRA believes that railroads conducting high speed operations in the United States can provide a world class service as safe as, or better than, any high speed operations conducted elsewhere. In anticipation of such service, and to ensure public safety, FRA proposes three tiers of requirements for PTC systems operating in high speed service. The proposed performance thresholds are intended to increase safety performance targets as the maximum speed limits increase to compensate for increased risks, including the potential frequency and adverse consequences of a collision or derailment.

Section 236.1007 proposes setting the intervals for the high speed safety performance targets for operations with: maximum speeds at or greater than 60 and 50 miles per hour for passenger service and freight operations, respectively, under paragraph (a); maximum speeds greater than 90 miles per hour under paragraph (b); maximum speeds greater than 125 miles per hour under paragraph (c); and maximum speeds greater than 150 mph under paragraph (d). The reader should note that the requirements increase as speed rises. Thus, for instance, operations with trains moving above 125 miles per hour must, in addition to the requirements under paragraph (c), adhere to the requirements under paragraphs (a) and (b).

Paragraph (a) addresses the PTC system requirements for territories where speeds are greater than 59 miles per hour for passenger service and 49 miles per hour for freight service. Under existing regulations (49 CFR 236.0), block signal systems are required at these speeds (unless a manual block system is in place, an option that this proposal would phase out). The proposed rule expects covered operations moving at these speeds to have implemented a PTC system that provides, either directly or with another technology, all of the statutory PTC system functions along with the safety-critical functions of a block signal system as defined in the existing standards of subparts A–F of part 236. The safety-critical functions of a block signal system include track circuits, which assist in broken rail detection and unintended track occupancies (equipment rolling out), and fouling circuits, which can identify equipment that is intruding on the clearance envelope and may prevent raking collisions.

FRA recognizes that advances in technology may render current block signal, fouling, and broken rail detection systems obsolete and FRA does not want to preclude the introduction of suitable and appropriate advanced technologies. Accordingly, FRA believes that alternative mechanisms providing the same functionality are entirely acceptable and FRA encourages their development and use to the extent they do not have an adverse impact on the level of safety.

Paragraph (b) addresses system requirements for territories where operating speeds are greater than 90 miles per hour, which is currently the maximum allowable operating speed for passenger trains on Class 5 track. At these higher speeds, the implemented PTC system must not only comply with paragraph (a), but also be shown to be fail-safe (as defined in Appendix C) and at all times prevent unauthorized intrusion of rail traffic onto the higher speed line operating with a PTC system. FRA intends this concept of fail-safe application to be understood in its commonplace meaning, *i.e.,* that insofar as feasible the system is designed to fail to a safe state, which normally means that trains will be brought to a stop. Further, FRA understands that there are aspects of current system design and operation that may create a remote opportunity for a ''wrong-side'' or unsafe failure and that these issues would be described in the PTCSP and mitigations would be provided. FRA recognizes that, as applied in the general freight system, this proposal could create a significant challenge related to interoperability of freight equipment operating over the same territory. Accordingly, FRA requests comment on whether, where operations do not exceed 125 miles per hour or some other value, the requirement for compliance with Appendix C safety assurance principles might be limited to the passenger trains involved, with ''non-vital'' onboard processing permitted for the intermingled freight trains.

As speed increases, it also becomes more important that inadvertent incursions on the PTC-equipped track be prevented at switch locations. FRA proposes that this be done by effective means that might include use of split-point derails properly placed, equipping of tracks providing entry with PTC, or arrangement of tracks and switches in such a way as to divert an approaching movement which is not authorized to enter onto the PTC line. The protection mechanism on the slower speed line must be integrated with the PTC system on the higher speed line in a manner to provide appropriate control of trains operating on the higher speed line if a violation is not prevented for whatever reason.

Paragraph (c) addresses high speed rail operations exceeding 125 miles per hour, which is the maximum speed for Class 7 track under § 213.307. At these higher speeds, the consequences of a derailment or collision are significantly greater than at lower speeds due to the involved vehicle's increased kinetic energy. In such circumstances, in addition to meeting the requirements under paragraphs (a) and (b), including having a fail-safe PTC system, the entity operating above 125 miles per hour must provide an additional safety analysis (the HSR–125) providing suitable evidence to the Associate Administrator that the PTC system can support a level of safety equivalent to, or better than, the best level of safety of comparable rail service in either the United States or a foreign country over the 5-year period preceding the submission of the PTCSP. Additionally, PTC systems on these high speed lines must provide the capability, as appropriate, to detect incursion from outside the right of way and provide warnings to trains. Each subject railroad is free to suggest in its HSR–125 any method to the Associate Administrator that ensures that the subject high speed lines are corridors effectively sealed and protected from such incursions (see § 213.347 of this title), including such hazards as large motor vehicles falling on the track structure from highway bridges.

Paragraph (d) addresses the highest speeds existing or currently contemplated for rail operations exceeding 150 miles per hour. FRA expects these operations to be governed by a Rule of Particular Applicability and the HSR–125 required by paragraph (c) shall be developed as part of an overall system safety plan approved by the Associate Administrator. The quantitative risk showing required for operations above 125 miles per hour is not required to include consideration of acts of deliberate violence. The reason for this exclusion is simply to remove speculative or extraordinary considerations from the analysis. FRA and the Department of Homeland Security will of course expect that security considerations are taken into account in system planning.

Section 236.1009 Procedural Requirements

RSIA08 and the proposed rule requires that by April 16, 2010, each Class I railroad carrier and each entity providing regularly scheduled intercity or commuter rail passenger transportation develop and submit to FRA a plan for implementing a PTC system by December 31, 2015, and that FRA shall not permit the installation of any PTC system or component in revenue service unless the Administrator has certified them through the approval process contained in this part. FRA understands implementation to include design, testing, potential Verification and Validation, installation, and operation over the PTC system's life cycle.

Current subpart H of part 236 provides a technically sound procedure for obtaining FRA approval of various processor-based signal and train control systems. However, as based on experience gained during BNSF's ETMS 1 project, FRA believes that its process does not support rapid FRA review and decision making and requires redundant submission of information common to multiple railroads. FRA also believes that although the risk analysis required by subpart H fully reflects operational parameters associated with the different type of operations, it is excessively cumbersome and overly time consuming for the purposes of deploying PTC system technologies at the rate required under RSIA08. Moreover, subpart H does not require an implementation plan and does not provide for ''certification.'' Arguably FRA could simply amend subpart H to include requirements relating to implementation plans and to modify the language to equate ''approval'' under subpart H with ''certification'' under the statute. However, FRA believes that such a resultant amended subpart H would remain unsuitable for a PTC system certification process in light of the congressional mandates. Those potential amendments alone would not remedy subpart H's inability to provide quick and efficient FRA review.

Accordingly, for PTC system implementation, certification, and build-out completion to occur within the very aggressive dates set by Congress, FRA is proposing a new subpart I, with some minor modifications to subpart H. Under subpart I, § 236.1007 proposes and explains the process by which each railroad may ultimately receive PTC System Certification for its PTC system. Under § 236.1007, FRA intends to avoid procedural redundancy, provide sufficient procedural flexibility to accompany the varying needs of those seeking certification, mitigate the financial risk associated with technological investment necessary to comply with the regulatory requirements, and otherwise develop a

streamlined process to provide for quick review and resolution of the issues leading to certification.

Generally speaking, there are three major elements of the proposed PTC System Certification process: PTC Implementation Plan (PTCIP) submission and approval, receipt or use of a Type Approval number—which may be provided with approval of a PTC Development Plan (PTCDP)—and PTC Safety Plan (PTCSP) submission to receive PTC System Certification. While § 236.1009 provides for the procedural requirements for this process, the contents for the applicable filings are provided for under §§ 236.1011, 236.1013, and 236.1015. The PTCIP is the written plan that defines the specific details of how and when the railroad will implement the PTC system. The PTCDP provides a detailed discussion of specific elements of the proposed technology and product that will be used to implement PTC as required by RSIA08. Approval of the PTCDP comes in the form of a Type Approval number that applies to the subject PTC system. The PTCSP provides the railroad-specific elements demonstrating that the system, as installed, meets the required safety performance objectives. Approval of the PTCSP comes in the form of a PTC System Certification.

Under paragraph (a), the PTCIP submission deadline of April 16, 2010, applies to all host railroads—as defined in § 236.1003—that exist at that time and are required to install a PTC system on one or more main lines in accordance with § 236.1005(b). Intercity and commuter railroads that are tenants on Class I, II, or III freight lines must also join with their host railroad in filing these plans. FRA believes that the railroad that maintains operational control over a particular track segment is generally in the best position to develop and submit the PTCIP, since that railroad is more knowledgeable of the conditions of and operations over its track. FRA recognizes that in cases where a tenant passenger railroad operates over a Class II or III railroad, the passenger railroad may be required to take a more active role in planning the PTC system deployment by working with the host railroad.

Paragraph (a), proposes to require that a PTCIP will be filed by railroads that are host railroads upon which passenger trains traverse and thus require PTC installation and operation. FRA recognizes that the statute requires timely submission of a PTCIP by each Class I railroad and each entity providing regularly scheduled intercity or commuter rail passenger transportation. Class II and III railroads that host intercity or commuter rail service will need to file implementation plans, whether or not they directly procure or manage installation of the PTC system.

The tenant passenger railroad will need to file jointly with the Class I, II or III railroad. This is consistent with RSIA08, which requires each subject passenger railroad to file an implementation plan. In the case of an intercity or commuter railroad providing service over a Class I railroad, it may be sufficient for the passenger railroad to file a letter associating itself with the Class I's plan to the extent it impacts the passenger service. FRA does not propose any requirement for joint filing in the more common case where another railroad has freight trackage rights over a Class I railroad's PTC line. However, the Class I railroad will, of course, address these joint operations and discuss the issue of interoperability in its plan as required by law.

If a host freight railroad and tenant passenger railroad cannot come to an agreement on a PTCIP to jointly file by April 16, 2010, they must instead each file a PTCIP separately with a notification separate from the PTCIP to the Associate Administrator indicating that a joint filing was not possible and an explanation of why the subject railroads could not agree upon a final PTCIP draft for joint filing. Under such a circumstance, each freight or passenger railroad may still be subject to a civil penalty assessed for each day past the deadline that a PTCIP is not jointly filed. FRA believes that these measures are necessary to ensure timely PTC system implementation and operation under the statute and are in the interest of public safety. FRA believes that when subject railroads have an obligation to submit a joint filing, they also carry the obligation to seek dispute resolution by private means if needed.

If a PTCIP or request for amendment (RFA), as provided in § 236.1021, must be submitted in accordance with the rule after April 16, 2010, paragraph (a) does not propose to provide the subject railroads with an opportunity to file separately. If a railroad intends to use track that would require the installation of a PTC system in accordance with paragraph (a)(3), and the parties have difficulty reaching agreement, then such usage would merely be delayed until the parties come to a mutually acceptable PTCIP for joint filing.

FRA notes that new passenger railroads are likely to begin operations during the period between issuance of the final rule in this proceeding and the end of the implementation period for PTC (December 15, 2015). Railroads beginning operations after April 16, 2010, but before December 31, 2015, that must install PTC would be expected to file a PTCIP that meets the requirements of paragraph (a) as soon as possible after the decision to proceed. It is FRA's position for purposes of this proposal that any railroad commencing operations after December 31, 2015, that require PTC will not be authorized to commence revenue operations until the PTC installation is complete. FRA requests comment on whether there are any legitimate exceptions to this approach, which appears to be the only approach consistent with the RSIA08.

Paragraph (b) contains the proposed process for receiving a Type Approval number for a particular PTC system. Under the proposed rule, each PTC system must receive a Type Approval number. The Type Approval is a number assigned to a particular off-the-shelf PTC system product—described in a PTCDP in accordance with § 236.1013—indicating FRA's belief that the product could fulfill the requirements of subpart I. FRA's issuance of a Type Approval does not mean that the product will meet the requirements of subpart I. The Type Approval applies to the technology designed and developed, but not yet implemented, and does not bestow any ownership or other similar interests or rights to any railroad. Each Type Approval number remains under the control of the FRA, and can be issued or revoked in accordance with this subpart.

FRA expects the proposed Type Approval process to provide a variety of benefits to FRA and the industry. If a railroad submits a PTCDP describing a PTC system, and the PTC system receives a Type Approval, then other railroads intending to use the same PTC system without variances may, in accordance with proposed paragraph (b)(1), simply rely on the Type Approval number without having to file a separate PTCDP. While the railroad filing the PTCDP must expend resources to develop and submit the PTCDP, all other railroads using the same PTC system would not. This would not only provide significant cost and time savings for a number of railroads, but will remove a significant level of redundancy from the approval process that is currently inherent in subpart H.

If, however, a railroad intends to use a modified version of a PTC system that has already received a Type Approval number, and the variances between the two systems are of a safety-critical nature, the railroad must submit a new PTCDP. The new PTCDP can either fully

comply with the content requirements under § 236.1013 or supply a Type Approval number for the other PTC system upon which the modified PTC system will rely and a document fulfilling the content requirements under § 236.1013 as it applies to the safety-critical variances.

In any event, to receive a new Type Approval number, the railroad must submit to FRA a PTCDP, drafted in accordance with § 236.1013, no later than when it submits its PTCIP. While the PTCDP may be drafted by the PTC system vendor, FRA believes it is the railroads' regulatory responsibility and duty to submit its PTCIP to FRA. FRA believes that requiring the submission of the PTCDP with the PTCIP will facilitate a reduction in regulatory activities, thus maximizing the time available for the railroads to carry out the necessary activities to complete PTC implementation within the 65 months available between April 2010, and December 2015. During that time, the each railroad is expected to carry out all of the required actions necessary to complete design, manufacture, test, and installation of the PTC office, onboard, and wayside subsystems. FRA believes that the process proposed in paragraph (b) provides the railroads considerable flexibility. By requiring that a railroad's PTCDP be submitted no later than its PTCIP, FRA intends to ensure that FRA has the opportunity early in the regulatory approval process to review and determine whether the proposed technical solution in the PTCDP has the potential to satisfy the statutory requirements. If a PTCDP is submitted at a later time, the length of time available to the railroad to perform a complete PTC implementation will be decreased even further.

Many issues relating to FRA's review of the railroad's PTCDP may also cause further delays, thus reducing the time between the receipt of a Type Approval and the statutory deadline of December 15, 2015, upon which the PTC system must be installed and operating. For instance, FRA may find that the PTCDP does not adequately conform to this subpart or otherwise has insufficient information to justify approval. FRA may also determine that there are issues raised by the PTCDP that would adversely affect the ability of FRA to eventually certify the system. If such a situation were to arise, the railroad and its vendor would need to address the issues, and resubmit the PTCDP for FRA approval.

Given the magnitude of the tasks faced by the railroads, any additional delays beyond April 16, 2010, will increase the risk of the railroad failing to meet the December 31, 2015, completion date required by RSIA08. Such delays will increase the length of time that the risk to the public and railroad employees remains unmitigated by PTC technologies. More specifically, FRA recognizes that any loss of time would make it more difficult for a railroad to perform the installation, testing, and analyses necessary to submit its PTCSP for PTC System Certification. Such installation, testing, and analyses cannot occur until the railroad knows the PTC system that it may use, as identified by a Type Approval number. Accordingly, paragraph (b) proposes that each PTCDP be filed no later than when its associated PTCIP is submitted in order to preserve as much time as possible to ensure that each railroad meets the statutory deadline and that Congress' intent is not otherwise frustrated.

FRA believes that the existence of certain overlapping issues in each PTCDP and PTCIP also requires their contemporaneous submission and review. FRA strongly believes that a meaningful implementation plan cannot be created if the railroad has not identified and understands the technology they propose to implement. Without an understanding of the technology, and the issues associated with its design, test, and implementation, any schedules developed by the railroad may be meaningless. Unless there is an understanding of the PTC system it hopes to use, and how it expects to implement that system, evaluation of a deployment schedule can not be undertaken.

Moreover, the PTCIP requires that the railroad address the issue of interoperability with other PTC systems. Any meaningful discussion regarding interoperability requires that the railroad have a clear understanding of the technical capabilities of the system that it proposes to implement before it can make an informed judgment of how the system will interoperate with other systems. The information required in the PTCDP provides the implementing railroad, other railroads with which the implementing railroad interfaces, and FRA with an understanding of the technical requirements necessary for interoperability. FRA believes that early identification of technical capabilities of the proposed PTC systems will allow the concerned parties to make more timely design adjustments to facilitate interoperability, reducing any delays that may increase the level of risk of the railroad meeting its statutory deadline.

FRA also believes that the process proposed by paragraph (b) will also reduce each railroad's financial risk related to implementing a technological system requiring governmental approval. Members of the PTC Working Group expressed concern about having to expend significant resources to implement and test a PTC system prior to submitting a PTCSP reflecting its findings in order to receive PTC System Certification. FRA believes that proposed paragraphs (b) and (e) address this concern. By requiring submission of a PTCDP earlier in the process, FRA intends to be involved in the design and implementation process from the beginning. After contemporaneously reviewing a railroad's PTCIP and PTCDP, FRA may be able to predetermine, and share with the railroad, an appropriate course of action to adequately address the various issues specific to the railroad and related to drafting a successful PTCSP. Moreover, in accordance with paragraph (e)—as discussed further below—each subject railroad may have the benefit of FRA monitoring its progress in implementing its PTC system. With FRA's involvement in the process, each subject railroad's financial risk associated with implementing a PTC system prior to PTCSP approval will be mitigated.

While FRA expects each subject railroad to submit its PTCDP with its PTCIP, the proposed rule does not preclude a railroad from submitting its PTCDP before its PTCIP for FRA review and approval. FRA encourages an earlier submission of the PTCDP to further reduce the required regulatory effort necessary to review the PTCIP and PTCDP if submitted together. More importantly, it would present an opportunity for FRA to issue a Type Approval for the proposed PTC system before April 16, 2010, thus providing other railroads intending to use the same or similar PTC system the opportunity to leverage off of the work already accomplished by simply submitting the Type Approval—and a much less burdensome PTCDP in the event of variances. FRA also believes that the proposed regulatory procedure may incentivize railroads using the same or similar PTC system to jointly develop and submit a PTCDP, thus further reducing the paperwork burden on FRA and the industry as a whole and increasing confidence in the interoperability between systems.

Paragraph (c) proposes to require that each subject railroad must either file a Request for Expedited Certification (REC) or submit an approved PTCIP, a Type Approval, and a PTCSP developed in accordance with § 236.1015 in order to receive PTC System Certification. A REC applies only to PTC systems that

have already been in revenue service and meet the criteria of § 236.1031(a), as further discussed below. If a PTC system is not eligible for expedited certification, the railroad must submit a PTCSP. As required under proposed § 236.1015, the PTCSP must include information relating to the operation and safety of the PTC system as defined in the PTCDP and as applied to the railroad's actual territory. To determine the sufficiency of the PTC system's applicability on the railroad's territory, the railroad may be required, as referenced in paragraph (e), to perform laboratory or field testing or have an independent assessment performed. Ultimately, PTC System Certification—issued by FRA based on a review and approval of the PTCSP—is FRA's formal recognition that the PTC system, as described and implemented, meets the statutory requirements and the provisions of subpart I. It does not imply FRA endorsement or approval of the PTC system itself.

To be clear, paragraph (d) requires that each PTCIP, PTCDP, and PTCSP must comply with the content requirements proposed in §§ 236.1011, 236.1013, and 236.1015, respectively. If the submissions do not comply with their respective regulatory requirements, then they may not be approved. Without approval, a PTC system may not receive a Type Approval or PTC System Certification.

Paragraph (d) also proposes that the contents of the submitted plans be understood by FRA personnel. In the interest of an open market, FRA does not want to preclude the ability of PTC system suppliers outside of the United States from manufacturing PTC systems or selling them to the subject railroads. However, in order to ensure the safety and reliability of those systems, FRA needs to adequately review the submitted plans. Accordingly, FRA proposes to require that all materials submitted in accordance with this subpart be in the English language, or be translated into the English language and attested as true and correct. FRA seeks comments on this proposal and whether any additional requirements are necessary to ensure FRA's adequate understanding of the submissions.

Under subpart H of part 236, a railroad may seek confidential treatment for certain information required to be submitted under that subpart. According to § 236.901(c), a railroad may label that information as confidential—if it deems it to be trade secrets, or commercial or financial information that is privileged or confidential under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4)—and submit the information in accordance with § 209.11. FRA believes that the same concept should be applied to materials submitted in accordance with proposed subpart I. FRA continues to believe that the referenced information should receive the protections under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Trade Secrets Act (18 U.S.C. 1905). FRA also continues to believe that it cannot make any flat pronouncements about the confidentiality of information it has not yet received. Should a FOIA request be made for information submitted under this rule that the submitting party has claimed should be withheld, the submitting company will be notified of the request in accordance with the submitter consultation provisions of the Department's FOIA regulations (§ 7.17) and will be afforded the opportunity to submit detailed written objections to the release of information protected by exemption 4 as provided for in § 7.17(a). Since FRA proposes to place the redacted versions of the submitted plans in a docket for public comment, FRA strongly encourages submitting parties to request protection from withholding only for those portions of documents that truly justify such treatment (*i.e.,* trade secrets and security sensitive information).

While FRA continues to believe that there is no need at this time to substantially revise § 209.11, FRA proposes in subpart I to require an additional document to assist FRA in efficiently and correctly reviewing confidential information. Under § 209.11, a redacted and an unredacted copy of the same document must be submitted. When FRA review is required to determine whether confidentiality should be afforded, FRA personnel must painstakingly compare side-by-side the two versions to determine what information has been redacted. To reduce this burden, FRA proposes that any material submitted for confidential treatment under subpart I and § 209.11 must include a third version that would indicate, without fully obscuring, the redacted portions. For instance, to indicate, without obscuring, the plan's redacted portions, the railroad may use the color or light gray highlighting, underlining, or strikethrough functions of its word processing program. This document will also be treated as confidential under § 209.11. While FRA could instead amend § 209.11 to include this requirement, FRA does not believe it to be necessary at this time. If more regulatory procedures in other subparts or parts provide for confidential treatment under § 209.11, FRA will then consider whether amendment of § 209.11 would be appropriate at that time.

As discussed more specifically below, FRA is considering requiring the submission of an adequate GIS shapefile to fulfill some of the PTCIP content requirements under § 236.1011. Redacting word processing documents includes the simple task of blocking the text wished to be deemed confidential. However, in a GIS shapefile, which includes primarily map data, visually blocking out the information would defeat the purpose. For instance, a black dot over a particular map location, or a black line over a particular route, would actually reveal the location. FRA expects that a railroad seeking confidentiality for portions of a GIS shapefile will submit three versions of the shapefile to comply with paragraph (d). FRA expects that the version for public consumption would merely not include the confidential information. FRA seeks comments on this proposal. FRA also seeks comments on how a third version of the GIS shapefile would indicate, without fully obscuring, the confidential portions.

As previously noted, FRA expects that FRA-monitored laboratory or field testing or an independent third party assessment may be necessary to support conclusions made and included in a railroad's submitted PTCDP or PTCSP. This issue is initially addressed in paragraph (e). The procedural requirements to effectuate either of those requirements can be found in §§ 236.1035 and § 236.1017, respectively.

Proposed paragraph (f) makes clear that FRA approval of a plan submitted under subpart I may be contingent upon any number of factors and that once the plan is approved, FRA maintains the authority to modify or revoke the resulting Type Approval or PTC System Certification. Under paragraph (f)(1), FRAs would reserve the right to attach additional requirements as a condition for approval of a PTCIP, PTCDP, or PTCSP. A risk-informed and performance-based approach is one in which the risk insights, and engineering analysis and performance history, are used to: (1) Focus attention on the most important activities; (2) establish objective criteria based upon risk insights for evaluating performance; (3) develop measurable or calculable parameters for monitoring systems performance; and (4) focus on the results as the primary basis of regulatory decision-making. To accomplish these tasks, it is necessary to identify, analyze,

assess, and control hazards and risks within all components of a system—including people, cultures and attitudes, procedures, materials, tools, equipment, facilities and software. In the preparation of any of these plans, railroads may have inadvertently failed to fully address hazards and risks associated with all of these components.

FRA believes that proposed paragraph (f)(1) will make the regulatory process more efficient and stable. Rather than reject a railroad's plan completely, and consequently delay the railroad's implementation of its PTC system, FRA would prefer to add additional conditions during the approval process to address these oversights. When determining whether to attach conditions to plan approval, FRA will consider whether: (1) The plan includes a well-defined and discrete technical or security issue that affects system safety; (2) the risk or safety significance of an issue can be adequately determined; (3) the issue affects public health and safety; (4) the issue is not already being processed under an existing program or process; and (5) the issue cannot be readily addressed through other regulatory programs and processes, existing regulations, policies, guidance, or voluntary industry initiatives.

Proposed paragraph (f)(2) provides FRA the right to withdraw a Type Approval or a PTC System Certification as a consequence of the discovery of new information regarding system safety that was not previously identified. FRA issuance of each Type Approval or PTC System Certification under performance-based regulations assumes that the model of the train control system and its associated probabilistic data adequately accounts for the behavior of all design features of the system that could contribute to system risk. Different system design approaches may result in different levels of detail introducing different approximations/errors associated with the safety performance. There are some characteristics for which modeling methods may not fully capture the behavior of the system, or there may be elements of the system for which historical performance data may not be currently available. These potential inconsistencies in the failure analysis could introduce significant variations in the predicted performance from the actual performance. Because of the design complexity associated with train control systems, FRA recognizes that these inconsistencies are not the results of deliberate acts by any individuals or organizations, but simply reflects the level of detail of the analysis, the availability of comprehensive information as well as the qualification and experience of the team of analysts, and the resource limitations of both the railroad and FRA.

In proposed paragraph (f)(3), FRA indicates that the railroad may be allowed to continue operations using the system, although such continued operations may have special conditions attached to mitigate any adverse consequences. It is FRA's intent, to the maximum extent possible and when consistent with safety, to assist railroads in keeping the systems in operation. FRA expects that if it places a condition on PTC system operations, each railroad will have a predefined process and procedure in place that would allow continued railroad operations, albeit under reduced capability, until appropriate mitigations are in place, and the system can be restored to full operation. In certain dire situations, FRA may actually order the suspension or discontinuation of operations until the root cause of the situation is understood and adequate mitigations are in place. FRA believes that suspending a Type Approval or a PTC System Certification pending a more detailed analysis of the situation may be appropriate, and that any such suspension must be done without prejudice. FRA expects to take such an action only in the most extreme circumstances and after consultation with the affected parties.

After reconsidering its issuance of a Type Approval or PTC System Certification, under paragraph (f)(4), FRA may either dismiss its reconsideration, continue to recognize the existing FRA approved Type Approval or PTC System Certification, allow continued operations with certain conditions attached, or order the railroad to cease applicable operations by revoking its Type Approval or PTC System Certification. If FRA dismisses its reconsideration or continues to recognize the Type Approval, any conditions required during the reconsideration period would no longer be applicable. If FRA will allow continued operations, FRA may order that the same or other conditions apply. FRA expects that revocation of a Type Approval or PTC System Certification may occur in very narrow circumstances, where the risks to safety appear insurmountable. Regrettably, there may be a few situations in which the inconsistencies are the result of deliberate fraudulent representations. In such situations, FRA may also seek criminal or civil penalties against the entities involved.

Proposed paragraph (g) enables FRA to engage in the proper inspection to ensure that a railroad is in compliance with subpart I. FRA inspections may be required to determine whether a particular railroad has not implemented a PTC system where necessary. For instance, FRA may need to confirm whether a track segment has traversing over it 5 million gross tons or more of annual railroad traffic, PIH materials, or passenger traffic. FRA may also need to inspect locomotives to determine whether they are equipped with a PTC onboard apparatus or to review locomotive logs to determine whether it has entered PTC territory. Paragraph (g) makes clear FRA's statutorily provided power to inspect the railroads and gather information necessary to enforce subpart I.

As noted above, in order to maintain an open marketplace, the proposed rule has been drafted to allow domestic railroads to purchase PTC systems from outside of the United States. FRA recognizes that PTC systems have been used in revenue service across the globe and that acceptable products may be available in other countries. FRA also recognizes that such use may come under a regulatory entity much like FRA. Accordingly, under paragraph (h), in the event information relating to a particular PTC system has been certified under the auspices of a regulatory entity in a foreign government, FRA is willing to consider that information as independently Verified and Validated in accordance with the proposed rule to support the railroad's PTCSP development. The phrase ''under the auspices'' intends to reflect the possibility of certification contractually performed by a private entity on behalf of a foreign government agency. However, the foreign regulatory entity must be one recognized by the Associate Administrator. A railroad seeking to enjoy the benefits of paragraph (h) must communicate that interest in its PTCSP.

Section 236.1011 PTC Implementation Plan Content Requirements

This proposed section describes the minimum required contents of a PTC Implementation Plan. A PTCIP is a railroad's plan for complying with the installation of mandatory PTC systems required by RSIA08. The PTCIP consists of implementation schedules, narratives, rules, technical documentation, and relevant excerpts of agreements that an individual railroad will use to complete mandatory PTC implementation. FRA will measure the railroad's progress in meeting the required implementation date based on the schedule and other information in the PTCIP. While the proposed rule does not specify or mandate any format

for the PTCIP, it must at least clearly indicate which portions intend to address compliance with the various plan requirements under § 236.1011. The PTCIP must also clearly identify each referenced document and either include a copy of each document (or its applicable excerpt) or indicate where FRA and the public may view that document. Should FRA not be able to readily determine adequate response to the required information, FRA will assume that the information has not been submitted, and will handle the document accordingly. The lack of the required information may result in FRA's disapproval of a PTCIP. To facilitate timely and successful submittals, FRA, through assistance from a PTCIP Task Force drawn from the PTC Working Group, is developing a template that could be used to format the documents that must be submitted. FRA, however, wishes to emphasize that the use of such a template is strictly voluntary, and encourages railroads to prepare and submit the documents in whatever structure is most economical for the railroad. FRA does believe it is necessary to require that the railroads expend their limited resources in reformatting of documents when such an activity adds no real value. However, while the template may be a useful tool, and in light of the various forms a PTCIP may be required to take due to the system the railroad intends to implement, complete adherence to the template will not guarantee FRA approval of the submitted PTCIP.

FRA expects each PTCIP to include various highly specific and descriptive elements relating to each railroad's infrastructure and operations. FRA recognizes that to manually assemble each piece of data into a PTCIP may be exceptionally onerous and time consuming and may make the PTCIP prone to errors. In light of the foregoing and due to the statutory requirement that Congress be apprised of the progress of the railroad carriers in implementing their PTC systems, FRA believes that electronic submission of much of this information may be warranted and preferred. To facilitate collection of this data, FRA proposes to require submission of this data in electronic format. Such electronic submission would fulfill the requirements under § 236.1011 to which they apply.

FRA believes that the preferred, least costly, and least error-prone method to comply with § 236.1011 is for railroads to submit an electronic geographic digital system map containing the aforementioned segment attribute information in shapefile format, which is a data format structure compatible with most Geographic Information System (GIS) software packages. Using a GIS provides an efficient means for organizing basic transportation-related geographic data to facilitate the input, analysis, and display of transport networks. Railways around the world rely on GIS to manage key information for rail operations, maintenance, asset management, and decision support systems. FRA believes that the railroads may have already identified track segments, and their physical and operational characteristics, in shapefile format. For instance, FRA believes that it may be preferable that for each track segment, a shapefile should provide the following identifiable information: Owning railroad(s); distance; signal system; track class; subdivision; number and location of sidings; maximum allowable speed; number and location of mainline tracks; annual volume of gross tonnage; annual number of cars carrying hazmat; annual number of cars carrying PIH; passenger traffic volume; average daily through trains; WIUs; switches; and at-grade rail-to-rail crossings. The requirements under paragraph (a) may be changed to accommodate any of these informational elements. FRA seeks comments on this proposal.

Paragraph (a)(1) proposes that the railroad describe the technology that will be employed in its PTC system. Here, FRA intends to use the term ''technology'' broadly to include all applicable tools, machines, methods, and techniques.

In proposed paragraph (a)(2), FRA addresses the statutory requirements that the PTCIP shall describe how the PTC system will provide interoperability with movements of trains of other railroad carriers over its lines. Practically speaking, this means that each locomotive operating within PTC territory must be able to communicate with and respond to the PTC systems installed on each PTC territory's track and signal system, except in limited situations established elsewhere in this proposed rule. For similar reasons, paragraph (a)(3) proposes that the PTCIP should describe how the PTC system will provide for interoperability of the system between the host and all tenant railroads on the lines required to be equipped with PTC systems under this subpart.

Interoperability means the ability of diverse systems and organizations to work together (inter-operate), taking into account the technical, operational, and organizational factors that may impact system-to-system performance. FRA expects each PTC system required by subpart I to exhibit syntactic interoperability—so that it may successfully communicate and exchange data with other PTC systems—and semantic interoperability—so that it may automatically, accurately, and meaningfully interpret the exchanged information to prove useful to the end user of each communicating PTC system. To achieve semantic interoperability, both sides must defer to a common information exchange reference model. In other words, the content of the information sent must be the same as what is received and understood. Taking syntactic and semantic interoperability together, FRA expects each PTC system to provide services to, and accept services from, other PTC systems and to use those services exchanged to enable the PTC systems to operate effectively together and to provide the intended results. The degree of interoperability should be defined in the PTCIP when referring to specific cases.

Interoperability is achieved through four interrelated means: Product testing, industry and community partnership, common technology and intellectual property, and standard implementation.

Product testing includes conformance testing and product comparison. Conformance testing ensures that the product complies with an appropriate standard. FRA recognizes that certain standards attempt to create a framework that would result in the development of the same end product. However, many standards apply only to core elements and allow developers to enhance or otherwise modify products as long as they adhere to those core elements. Thus, if an end product is developed in different ways to conform to the same standard, there may still be discrepancies between each instantiation of the end product due to the existence of those variables. Accordingly, FRA believes that comparison testing must also occur to ensure that each instantiation of the same product, regardless of the means upon which it is created to meet the same standard, is ultimately identical. In regards to PTC systems, such comparison testing must occur on all portions that relate to each system's interoperability with other systems. Thus, it is also important that the PTC system be formally tested in a production scenario—as they will be finally implemented—to ensure that it will actually intercommunicate and interoperate with other PTC systems as advertised and intended.

To reach interoperability between the various applicable PTC systems, each PTCDP must also show that the systems share common product engineering.

Product engineering refers to the common standard, or a sub-profile thereof, as defined by the industry and community partnerships, specifically intended to achieve interoperability. Without common product engineering, the systems will be unable to intercommunicate or otherwise interact as necessary to comply with the proposed rule.

FRA expects that each interoperability standard for PTC systems will be developed by a partnership between various industry participants. Industry and community partnerships, either domestic or international, usually sponsor standard workgroups to define a common standard to provide system intercommunications for a specific purpose. At times, an industry or community will sub-profile an existing standard produced by another organization to reduce options and thus making interoperability more achievable. Thus, in each PTCDP, the railroad must discuss how it developed or adopted a standard commonly accepted by that partnership.

Means of achieving interoperability include having the various entities involved using the same PTC system product or obtaining its components from the same developer. While FRA does not necessarily require this approach—since the agency seeks to maintain an open and competitive marketplace—FRA believes that this is a suitable means to achieve interoperability. This technique may provide similar technical results when using PTC system products from different vendors relying on the same intellectual property. FRA recognizes that certain developers with an intellectual property interest in a particular technology may provide a non-exclusive license of its intellectual property to another entity so that the licensee may introduce into the marketplace a substantially similar product reliant on that intellectual property. In such a case, FRA foresees that the use of a common PTC system technology—even if it is proprietary to a single or multiple entities and licensed to railroads—could reduce the variability between components, thus providing for a more efficient means to achieve interoperability.

In order for interoperability to actually occur between multiple entities' PTC systems, there must be some standard to which they all adhere. Thus, FRA also expects that each PTCDP will provide assurances of a common interoperability standard agreed to between all entities using PTC systems that must interoperate.

Since each of these interrelated means has an important role in reducing variability in intercommunication, each railroad's PTCIP must clearly describe the elements required under paragraph (a)(1)–(3).

Much of the remaining information required in a PTCIP under the proposed rule relies on the location, length, and characteristics of each track segment. Therefore, a common understanding of a track segment is necessary. A track is the main designation for describing a physical linear portion of the network. Each line of railroad has a station location referencing system, which serves to locate inventory features and defects along the length of the track. Because some tracks can be very long, track segments are established to divide the track into smaller ''management units.'' Typically, segment's boundaries are established at point of switch (POS) locations, but may also be located at mile markers, grade crossings, or other readily identifiable locations. Inspection, condition assessment, and maintenance planning is performed individually on each segment. After the track network hierarchy is established, the attribute information associated with each track is defined. This attribute information describes the track layout (*e.g.,* curves and grades), the track structure (*e.g.,* rail weights and tie specifications), track clearance issues, and other track related items such as turnouts, rail-to-rail at-grade crossings, highway-rail grade crossings, drainage culverts, and bridges. Inventory information about these track attributes can be quite detailed. The benefits of a complete and accurate track inventory provides a record of the track network's properties and information about the existing track materials at the specific locations when maintenance or repair is necessary.

Proposed paragraphs (a)(4) and (a)(5) require the railroad to put its entire implementation plan into an understandable context, primarily as it relates to the sequence and schedule of line segment implementation events. Under RSIA08, § 20157(a)(2), Congress requires each subject railroad, in its PTCIP, to describe how it shall, to the extent practical, implement the PTC system in a manner that addresses areas of greater risk before areas of lesser risk. Accordingly, under paragraph (a)(4), the PTCIP must discuss the railroad's areas of risk and the criteria by which these risks were evaluated and prioritized for PTC system implementation. To this end, the railroad must clearly identify all track segments that must be equipped, the basis for that decision for each segment (which might be done by categories of segments), and, as provided in paragraph (a)(5), the dates that implementation of each segment will be completed, taking into account the time necessary to fulfill the procedural requirements related to PTCSP submission, review, and approval. At a minimum, the deployment decisions must be based on segment traffic characteristics such as passenger and freight traffic volumes, the quantity of PIH and other hazardous materials, current methods of operations, existence of block signals and other traditional train control technologies, the number and class of tracks, authorized and allowable speeds for each segment, and other unusual characteristics that may adversely impact safety, such as unusual ruling grades and other track geometries. In cases where deployment of the PTC system cannot be accomplished in order of areas with the greatest risk to areas with the least risk, paragraph (a)(9) proposes that the railroad must explain why such a deployment was not practical and the steps that will be taken to minimize adverse consequences to the public until the line segment can be equipped.

Proposed paragraphs (a)(6) and (a)(7) require the PTCIP to include information regarding the rolling stock and wayside devices that will be equipped with the appropriate PTC technology. For a PTC system to work as intended, PTC system components must be installed and operated in all applicable offices and on all applicable onboard and wayside subsystems. Accordingly, the PTCIP must identify which technologies will be installed on each subsystem and when they are scheduled to be installed.

Under paragraph (a)(6), each host railroad filing the PTCIP must include a comprehensive list of all rolling stock upon which a PTC onboard apparatus must be operative. FRA understands that in most situations, the rolling stock referenced in paragraph (a)(6) may only apply to lead locomotives. However, in the interest of not hindering creative technological innovations, FRA presumes the possibility that PTC system technology may also be attached to additional rolling stock to provide other functions, including determining train capacity and length or providing certain acceptable and novel train controls. To be kept apprised of these possibilities, FRA is proposing in paragraph (a)(6) that each PTCIP include a list of all rolling stock equipped with PTC technology. FRA believes that the PTCIP should also identify any risks associated with trains operated by tenant railroads and not equipped with

PTC system technology and the efforts that the host railroad has made to establish the extent of that risk. Although FRA believes that this is inherent to reviewing the risk in the system, FRA asks for comment as to whether a requirement should be specifically called out in the rule text.

FRA understands that a host railroad may not receive cooperation from a tenant railroad in collecting the necessary rolling stock information. Nevertheless, FRA expects each host railroad to make a good faith effort. Identification of those tenant railroads that the host railroad attempted to obtain the requisite and applicable information from and that failed to address a host railroad's written request may establish a good faith effort by the host railroad.

Proposed paragraph (a)(7) requires the PTCIP to provide a detailed schedule of and the railroad to subsequently report WIU installation. The selection and identification of a technology selected as part of the PTCIP will also, to a great extent, determine the distribution of the functional behaviors of each of the PTC subsystems (*e.g.,* office, wayside, communications, and back office). The WIU is a type of remote terminal unit (RTU) that is part of a larger PTC system, which is a type of Supervisory Control and Data Acquisition System (SCADA). As a whole, the safe and efficient operation of a SCADA—a centralized system that covers large areas, monitors and control systems, and passes status information from, and operational commands to, RTUs—is largely dependent on the ability of each of its RTUs to accurately receive and distribute the required information. As such, a PTC system cannot properly operate without properly functioning WIUs to provide and receive status information and react appropriately to control information.

It is commonly understood that a WIU device is capable of communicating directly to the office, train, or other wayside unit. FRA recognizes that there may not be the same amount of WIUs and devices that they monitor. Depending on the architecture and technology used, a single WIU may communicate the necessarily information as it relates to multiple devices. FRA is comfortable with this type of consolidation provided that, in the event of a failure of any one of the devices being monitored, the most restrictive condition will be transmitted to the train or office, except where the system may uniquely identify the failed device in a manner that will provide safe movement of the train when it reaches the subject location.

Because of the critical role that WIU's play in the proper and safe operation of PTC systems, paragraph (a)(7) proposes that the railroad identify the number of WIU's required to be installed on any given track segment and the schedule for installing the WIU's associated with that segment. This information is necessary to fully and meaningfully fulfill the RSIA08 requirement that by December 31, 2012, Congress shall receive a report on the progress of the railroad carriers in implementing PTC systems. *See* 49 U.S.C. 20157(d). To comply with this statutory requirement, each railroad must determine the number of WIUs it will need to procure and the location—as defined by the applicable subdivision—that each WIU will be installed. FRA believes that if a railroad does not perform these traditional engineering tasks, it will risk exceeding the statutory implementation deadline of December 31, 2015. FRA considers this information an integral part of the PTCIP that must be submitted to FRA for approval.

FRA recognizes the potential for technological improvements that may modify the number and types of WIU's required. FRA also recognizes that during testing and installation, it may be discovered that additional WIU installation may be necessary. In either case, the railroad will be required to submit an RFA in accordance with § 236.1021 indicating how the railroad intends to appropriately revise its schedule to reflect the resulting necessary changes. Nevertheless, regardless of whether FRA approves or disapproves of the RFA, if a railroad is required to submit its PTCIP by April 16, 2010, implementation must still be completed by the statutory deadline December 31, 2015.

Under proposed paragraph (a)(8), each railroad must also identify in its PTCIP which of its track segments are either main line or not main line. This list must be made based solely on the statutory and regulatory definitions regardless of whether FRA may later deem a track segment as other than main line. If a railroad has a main line that it believes should be considered not main line, it may file with the PTCIP a main line track exception addendum (MTEA) in accordance with § 236.1019, as further discussed below. Each track segment included in the MTEA should be indicated as much on the list required under paragraph (a)(8) so that the PTCIP accounts for each track segment with an appropriate cross-reference to the subject MTEA.

Paragraph (a)(9) requires that the plan call out the basis for this determination to the extent the railroad determines that risk-based prioritization required by paragraph (a)(4) of this section is not practical. FRA recognizes that there may be situations where risk is somewhat evenly distributed and where other factors related to practical considerations—such as the need to establish reliable operation of the system in less complex environments before installing it in more complex environments—may be the prudent course. However, the burden of establishing the reasonableness of this approach would be on the railroad, starting with a showing that risk does not vary substantially among the line segments in question.

As previously mentioned, § 236.1005(a) requires each applicable PTC system to be designed to prevent train-to-train collisions. Under that section, FRA has proposed various requirements that would apply to at-grade rail-to-rail crossings, also known as diamond crossings. While the proposed rule text includes certain specific technical requirements, it also provides the opportunity for each subject railroad to submit an alternative arrangement providing an equivalent level of safety as specified in an FRA approved PTCSP. Accordingly, under proposed paragraph (a)(10), if the railroad intends to utilize alternative arrangements providing an equivalent level of safety to that of the table provided under § 236.1005(a)(1)(i), each PTCSP must identify those alternative arrangements and methods, with any associated risk reduction measures, in its PTCSP.

Paragraph (b) contains proposed provisions related to further deployment of PTC. As noted elsewhere in this preamble, the specific characteristics of the PTC route structure, with the focus on PIH traffic as an indicator of risk, was a late addition to the bill that would become RSIA08, not having appeared in either the House or Senate bills until the final package was assembled using consultations between the committee staffs in lieu of a formal committee of conference. Although the statutory construct (Class I rail line with 5 million gross tons and some PIH materials) adequately defines most of the core of the national freight rail system, it is a construct that will introduce distortions at both ends of the spectrum of risk.

On one hand, a line with a maximum speed limit of 25 miles per hour ending at a grain elevator that receives a few cars of anhydrous ammonia per year is a ''main line'' if it has at least 5 million gross tons of traffic (a very low threshold for a Class I railroad). This is not a line without risk, particularly if it lacks wayside signals, but FRA analysis

shows that the potential for a catastrophic release from a pressure tank car is very low at an operating speed of 25 miles per hour, and the low tonnage is likely associated with relatively infrequent train movements—limiting the chance of a collision. As FRA understands the congressional mandate, the law gives FRA little choice but to require PTC under these circumstances.

On the other end of the spectrum, lines with greater risk may go unaddressed. For instance, a line carrying perhaps a much higher level of train traffic and significant volumes of other hazardous materials at higher speeds, without any PIH or passenger traffic, would not be equipped. This example is not likely to be present to any significant extent under current conditions. However, should the Class I railroads raise freight rates sufficiently to eliminate PIH traffic by making rail transportation prohibitively expensive, the issue would be presented as a substantial one. Most of the transportation risk—including hazards to train crews and roadway workers and exposure to other hazardous materials if released—would remain, but not the few carloads of PIH. FRA believes that the intent of Congress with respect to deployment of PTC might be defeated, even though the literal language of the legislation would be satisfied. Other lines carrying very heavy volumes of bulk commodities such as coal and intermodal traffic may or may not include PIH traffic. Putting aside the risk associated with PIH materials, significant risk exists to train crews and persons in the immediate vicinity of the right-of-way if a collision or other PTC-preventable accident occurs. Any place on the national rail system is a potential roadway work zone, but special challenges are presented in providing for on-track safety where train movements are very frequent.

Risk on the larger Class II and III railroads' lines is also a matter of concern, and the presence of significant numbers of Class I railroad trains on some of those properties presents the opportunity for further risk reduction, since over the coming years virtually all Class I railroad locomotives will be equipped with PTC onboard apparatus'. Examples include trackage and haulage rights retained over Class II and III railroads following asset sales in which the Class I railroads divested the subject lines. Other prominent examples involve switching and terminal railroads, the largest of which are owned and controlled by two or more Class I railroads and function, in effect, as extensions of their systems. Conrail Shared Assets, a large regional switching railroad that is owned by NS and CSXT and is comprised of major segments of the former Conrail, then a Class I railroad, is perhaps the classic example.

FRA notes that there has also been a trend, only recently and temporarily abated by the downturn in the economy, toward higher train counts on some non-signaled lines of the Class I railroads. On a train-mile basis, these operations present about twice the risk as similar operations on signalized lines. These safety gaps need to be filled; and, while most will be filled due to the presence of PIH traffic, FRA cannot verify that this is the case in every instance.

FRA concludes that the mandated deployment of PTC will leave some substantial gaps in the Class I route structure, including gaps in some major urban areas. FRA believes that these gaps will, over time, be ''filled in'' by voluntary actions of the Class I railroads as they establish the reliability of their PTC systems, verify effective interoperability, and begin to enjoy the safety and other business benefits from use of these systems. FRA fully understands both the desire of the labor stakeholders in the PTC Working Group to see a broader build-out of PTC systems than that ''minimally'' required by RSIA08 and the concerns of the Class I railroads' representatives who noted the extreme challenge associated with equipping tens of thousands of wayside units, some 20,000 locomotives, and their dispatching centers' back offices within the statutory implementation period.

The Congress recognized that all of these issues are legitimate concerns and so mandated the establishment of Risk Reduction Programs under the same legislation. Section 103 of RSIA08 codifies language that includes, within the Risk Reduction Program, a Technology Implementation Plan that is specifically required to address technology alternatives, including PTC. Accordingly, the PTC and Risk Reduction provisions in RSIA08 are clearly aligned in purpose; and there are also references in the technology plan elements of the Risk Reduction language that address installation of PTC by other railroads. Further, FRA has been charged with a separate rulemaking under section 406 of RSIA08 regarding risk in non-signaled (dark) territory that significantly overlaps the issue set in this rulemaking and the Risk Reduction section. Use of technologies that are integral to PTC systems constitute the best response to hazards associated with non-signaled lines. Switch position monitoring systems, track integrity circuits, digital data links and other technology used to address dark territory issues should be and, as presently conceived, are forward-compatible with PTC. FRA proposes in paragraph (b) to dovetail these requirements by requiring that each Class I railroad include in its PTCIP deployment strategies indicating how it will approach the further build-out of full PTC, or partial implementation of PTC (*e.g.*, using PTC technology to prevent train-to-train collisions but perhaps not monitoring all switches in the territory; or using PTC to protect movements of the Class I over a switching or terminal railroad without initially requiring all controlling locomotives of the switching or terminal railroad to be equipped). These railroads would then be required to include in the technology elements of their initial Risk Reduction plans a specification of which lines will be equipped and with what PTC system elements. Proposed paragraph (b) makes clear that there would be no expectation regarding additional lines being equipped until those mandated by subpart I have been addressed. FRA shares the view of the Class I railroads and the passenger railroads that the December 31, 2015, deadline already presents a substantial challenge for railroads, suppliers and the employees affected.

Paragraph (c) proposes to codify in regulation the statutory mandate that FRA review the PTCIP and determine, within 90 days upon receipt of the plan, whether to provide its approval or disapproval. FRA believes it is also important to provide procedural rules to communicate approval or disapproval. Thus, under paragraph (c), FRA proposes that any approval or disapproval of a PTCIP requires FRA to provide written notice. In the event that FRA disapproves of the PTCIP, the notice will also include a narrative explaining the reasons for disapproval. Once the railroad receives notification that its PTCIP has been disapproved by FRA, it will have 30 days to resubmit its PTCIP for review and approval. While FRA may provide assistance to remedy a faulty PTCIP, it is ultimately the railroad's responsibility and burden to develop and submit a PTCIP worthy of FRA approval. A railroad may be subject to civil penalties if it fails to timely file its PTCIP under this section. As noted previously, subpart I applies to each railroad that Congress and FRA has mandated to install a PTC system. A railroad that is not required to install a PTC system may still do so under its own volition. In such a case, it may

either seek approval of its system under either subpart H or I. Paragraph (d) intends to make this choice clear.

Paragraph (e) responds to comments by labor organizations in the PTC Working Group. These employee representatives sought the opportunity to comment on major PTC filings. The paragraph provides that, upon receipt of a PTCIP, PTCDP, or PTCSP, FRA posts on its public Web site notice of receipt and reference to the public docket in which a copy of the filing has been placed. FRA may consider any public comment on each document to the extent practicable within the time allowed by law and without delaying implementation of PTC systems. The version of any filing initially placed in the public docket would be the redacted copy as filed by the railroad. If FRA later determined that additional material was not deserving of protection as confidential, that material would be added to the docket.

Section 236.1013 PTCDP Content Requirements and Type Approval

As noted in the discussion above regarding § 236.1009, each PTCSP must be submitted with a Type Approval number identifying a PTC system that FRA believes could fulfill the requirements of subpart I. Under § 236.1009, a railroad may submit an existing Type Approval number in lieu of a PTC Development Plan (PTCDP) if the PTC system it intends to implement and operate is identical to the one described in that Type Approval's associated PTCDP. In the event, however, that a railroad intends to install a system for which a Type Approval number has not yet been assigned, or to use a system with an assigned Type Approval number that may have certain variances to its safety-critical functions, then the railroad must submit a PTCDP to obtain a new Type Approval number.

The PTCDP is the core document that provides the Associate Administrator sufficient information to determine whether the PTC system proposed for installation by the railroad could meet the statutory requirements for PTC systems specified by RSIA08 and the regulatory requirements under subpart I. Issuance of a product Type Approval number is contingent upon the approval of the PTCDP by the Associate Administrator. While filing of a PTCDP is optional in the sense that the railroad may proceed directly to submission of the PTCSP by the April 16, 2010 deadline (see § 236.1009), FRA encourages railroads engaged in joint operations to do so. Approval of the PTCDP, and issuance of a Type Approval, presents the opportunity for other railroads to reduce the effort required to obtain a PTC System Certification. If a Type Approval for a PTC system exists, another railroad may also use that Type Approval provided there are no variances in the system as described in the Type Approval's PTCDP. In such cases, the other railroad may avoid submitting its own PTCDP by simply incorporating by reference the supporting information in the Type Approval's PTCDP and certifying that no variances in the PTC system have been made.

This proposed section describes the contents of the PTCDP required to obtain FRA approval in the form of issuance of a Type Approval number. The proposed provisions of this section require each PTCDP to include all the elements and practices listed in this section to provide reasonable assurance that the subject PTC system will meet the statutory requirements and are developed consistent with generally-accepted principles and risk-oriented proof of safety methods surrounding this technology. FRA believes it is necessary to include the provisions contained in this section in order to provide reasonable assurance that the product, when developed and deployed, will have no adverse impact on the safety of railroad employees, the public, and the movement of trains.

FRA recognizes that much of the information required by § 236.1013 normally resides with the PTC system's developer or supplier maintains and not the client railroad. While FRA expects that each railroad and its PTC system supplier may jointly draft a PTCDP, the railroad has the primary responsibility for the safety of its operations and for providing the information required under § 236.1013. Accordingly, each railroad required to submit a PTCDP under subpart I should make the necessary arrangements to ensure that the requisite information is readily available from the supplier for submission to the agency. FRA believes that suppliers and railroads will develop a PTCDP for most products that adequately address the requirements of the new subpart without substantial additional expense. As part of the design and evaluation process, it is essential to ensure that an adequate analysis of the features and capabilities is made to minimize the possibility of conflicts resulting from any use or feature, including a software fault. Since this analysis is a normal cost of software engineering development, FRA does not believe this requirement imposes any additional significant costs beyond what should already be done when developing safety-critical software.

In proposed §§ 236.1013 and 236.1015, various adjectives may precede the several of the requirements. For instance, certain paragraphs require ''a complete description,'' ''a detailed description,'' or simply a ''description.'' These phrases are inherited from subpart H. Their inclusion in subpart I are similarly not to imply that any description should be more or less detailed or complete than any other description required. By contrast, they are included merely for the purposes of emphasis.

Paragraph (a)(1) proposes to require that the PTCDP include system specifications that describe the overall product and identify each component and its physical relationship in the system. FRA will not dictate specific product architectures, but will examine each PTC system to fully understand how its various parts interrelate. Safety-critical functions in particular will be reviewed to determine whether they are designed to be fail-safe. FRA believes this provision is an important element that can be applied to determine whether safety is maximized and maintainability can be achieved.

Paragraph (a)(2) proposes to require a description of the operation where the product will be used. Upon receipt of this information within a PTCDP, FRA will have better contextual knowledge of the product as it applies to the type of operation on which it is designed to be used. Where operational behaviors are not applicable to a particular railroad, or the product design is not intended to address a particular operational behavior, FRA would expect a short statement indicating which operational characteristics do not apply and why they are not applicable.

Paragraph (a)(3) proposes that the PTCDP include a concept of operations, a list of the product's functional characteristics, and a description explaining how various components within the system are controlled. FRA expects that the information provided under paragraphs (a)(2) and (a)(3) will together provide a thorough understanding of the PTC system. FRA will review this information—primarily by comparing the subject PTC system's functionalities with those underlying principles contained in standards for existing signal and train control systems—to determine whether the PTC system is designed to account for all relevant safety issues. While FRA proposes to not prescribe PTC system design standards, FRA expects that each applicant compare the concepts contained in existing standards to the

operational concepts, functionalities, and controls contemplated for the PTC system in order to determine whether a sufficient level of safety will be achieved. For example, the proposed requirements prescribe that where a track relay is de-energized, a switch or derail is improperly lined, a rail is removed, or a control circuit is opened, each signal governing movements into the subject block occupied by a train, locomotive, or car must display its most restrictive aspect for the safety of train operations. The principle behind the requirement is that, when a condition exists in the operating environment, or with respect to the functioning of the system, that entails a potential hazard, the system will assume its most restrictive state to protect the safety of train operations.

Paragraph (a)(4) proposes that each PTCDP include a document that identifies and describes each safety-critical function of the subject PTC system. The product architecture includes both hardware and software aspects that identify the protection developed against random hardware faults and systematic errors. Further, the document should identify the extent to which the architecture is fault tolerant. FRA intends to use this information to determine whether appropriate safety concepts have been incorporated into the proposed PTC system. For example, existing regulations require that when a route has been cleared for a train movement, it cannot be changed until the governing signal has been caused to display its most restrictive indication and a predetermined time interval has expired where time locking is used or where a train is in approach to the location where approach locking is used. FRA intends to use this information to determine whether all the safety-critical functions are included. Where such functionalities are not clearly determined to exist as a result of technology development, FRA will expect the reasoning to be stated and a justification provided describing how that technology provides the required level of safety. Where FRA identifies a void in safety-critical functions, FRA may not approve the PTCDP until remedial action is taken to rectify the concern.

FRA recognizes that the information required under paragraph (a)(4) may already be provided when complying with paragraph (a)(1). In such a case, the railroad shall cross reference where in the PTCDP that both paragraphs (a)(1) and (a)(4) are jointly satisfied.

Paragraph (a)(5) proposes to require that each PTCDP address the minimum requirements under § 236.1005 for development of safety-critical PTC systems. FRA expects the information provided under paragraph (a)(5) to cover: identification of all safety requirements that govern the operation of a system; evaluation of the total system to identify known or potential safety hazards that may arise over the life-cycle of the system; identification of all safety issues during the design phase of the process; elimination or reduction of the risks posed by the hazards identified; resolution of safety issues presented; development of a process to track progress; and development of a program of testing and analysis to demonstrate that safety requirements are met. Paragraph (a)(5) also requires that each railroad identify the PTC system's safety assurance concepts.

Paragraph (a)(6) proposes to require a submission of a preliminary human factors analysis that addresses each applicable human-machine interface (HMI) and all proposed product functions to be performed by humans to enhance or preserve safety. FRA expects this analysis to place special emphasis on proposed human factors responses—and the result of any failure to perform such a response—to safety-critical hazards, including the consequences of human failure to perform. For each HMI, the PTCDP should address the proposed basis of assumptions used for selecting each such interface, its potential affect upon safety, and all potential hazards associated with each interface. Where more than one employee is expected to perform duties dependent upon HMI input or output, the analysis must address the consequences of failure by one or multiple employees. FRA intends to use this information to determine the proposed HMI's effect upon the safety of railroad operations. The preliminary human factors analysis must propose how the railroad or its PTC system supplier plans to address the HMI criteria listed in Appendix E to part 236 or any alternatives proposed by the railroad and deemed acceptable by the Associate Administrator.

Paragraph (a)(6) also proposes that the PTCDP explain how the proposed HMI will affect interoperability. RSIA08 requires that each subject railroad explain how it intends to obtain system interoperability. The ability of a train crew member to operate another railroad's PTC system significantly depends upon a commonly understood HMI. The HMI provides the end user with a method of interacting with the underlying system and accessing the PTC functionality. FRA expects that each railroad will adopt an HMI standard that will ensure ease of use of the PTC system both within, and between, railroads.

Paragraph (a)(7) proposes to require an analysis regarding how subparts A through G of part 236 apply, or no longer apply, to the subject PTC system. FRA recognizes that while a PTC system may be designed in accordance with the underlying safety concepts of subparts A through G, the specific existing requirements contained in those subparts are not applicable. In any event, the PTCDP must identify each pertinent requirement considered to be inapplicable, fully describe the alternative method used to fulfill that underlying safety concept, and explain how the proposed PTC system supports the underlying safety principle. FRA notes that certain sections in subparts A though G may always be applicable to PTC systems certified under subpart I.

FRA is concerned about all dimensions of system security. Thus, paragraph (a)(8) proposes to require the PTCDP to include a description of the security measures necessary to meet the specifications for each PTC system. Security is an important element in the design and development of PTC systems and covers issues such as developing measures to prevent hackers from gaining access to software and to preclude sudden system shutdown, mechanisms to provide message integrity, and means to authenticate the communicating parties. Safety and security are two closely related topics. Both are elements for ensuring that a subject is protected and without risk of harm. In the industrial marketplace, the goals of safety and security are to create an environment protecting assets from hazards or harm. While activities to ensure safety usually relate to the possibility of accidental harm, activities to ensure security usually relate to protecting a subject from intentional malicious acts such as espionage, theft, or attack. Since system performance may be affected by either inadvertent or deliberate hazards or harms, the safety and security involved in the implementation and operation of a PTC system must both be considered.

Integrated security recognizes that optimum protection comes from three mutually supporting elements: physical security measures, operational procedures, and procedural security measures. Today, the convergence of information and physical security is being driven by several powerful forces, including: interdependency, efficiency and organizational simplification, security awareness, regulations, directives, standards, and the evolving global communications infrastructure. Physical security describes measures

that prevent or deter attackers from accessing a facility, resource, or information stored on physical media and guidance on how to design structures to resist various hostile acts. Communications security describes measures and controls taken to deny unauthorized persons information derived from telecommunications and ensure the authenticity of such telecommunications. Because of the integrated nature of security, FRA expects that each PTCDP will address security as a holistic concept, and not be restricted to limited or specific aspects.

Paragraph (a)(9) proposes to require documentation of assumptions concerning reliability and availability targets of mechanical, electrical, and electronic components. When building a PTC system, designers may make numerous presumptions that will directly impact specific implementation decisions. These fundamental assumptions usually come in the form of data (*e.g.,* facts collected as the result of experience, observation or experiment, or processes, or premises) that can be randomly sampled. FRA does not expect to audit all of the fundamental assumptions on which a PTC system has been developed. Instead, FRA envisions sampling and reviewing fundamental assumptions prior to product implementation and after operation for some time. FRA expects that the data sampled may vary, depending upon the PTC system. It is not possible to provide a single set of quantitative numbers applicable to all systems, especially when systems have yet to be designed and for which the fundamental assumptions are yet to be determined. Quantification is part of the risk management process for each project. FRA believes that the actual performance of the system observed during the pre-operational testing and post-implementation phases will provide indications of the validity of the fundamental assumptions. FRA proposes that this review process will occur for the life of the PTC system (*i.e.,* as long as the product is kept in operation). The depth of details required will depend upon what FRA observes. The range of difference between a PTC system's predicted and actual performance may indicate to FRA the validity of the underlying fundamental assumptions. Generally, if the actual performance matches the predicted performance, FRA believes that it will not have to extensively review the fundamental assumptions. If the actual performance does not match predicted performance, FRA may need to more extensively review the fundamental assumptions.

FRA expects each subject railroad to confirm the validity of initial assumptions by comparing them to actual in-service data. FRA is aware that mechanical and electronic component failure rates and times to repair are easily quantified data, and usually are kept as part of the logistical tracking and maintenance management of a railroad. FRA believes that this proposed criterion will enhance the quality of risk assessments conducted pursuant to this subpart by forcing PTC system designers and users to consider the long-term effects of operation over the course of the PTC system's projected life-cycle. If a PTC system can be used beyond its design life-cycle, FRA expects that any continued use would be only under a waiver provided in accordance with part 211 or under a PTCDP or PTCSP amended in accordance with § 236.1021. In its request for waiver or request for amendment, the railroad should address any new risks associated with the life-cycle extension.

Paragraph (a)(9) also proposes to require specification of the target safety levels. This includes the identity of each potential hazard and how the events leading to a hazard will be identified for each safety-critical subsystem; the proposed safety integrity level of each safety-critical subsystem, and the proposed means that accomplishment of these targets will be evaluated. This paragraph also requires identification of the proposed backup methods of operation and safety-critical assumptions regarding availability of the product. FRA believes this information is essential for making determinations about the safety of a product and both the immediate and long-term effect of its failure. FRA contends that availability is directly related to safety to the extent the backup means of controlling operations involves greater risk (either inherently or because it is infrequently practiced).

Paragraph (a)(10) proposes to require a complete description of how the PTC system will enforce all pertinent authorities and block signal, cab signal, or other signal related indications. FRA appreciates that not all PTC architectures will seek to enforce the speed restrictions associated with intermediate signals directly, but nevertheless a clear description of these functions is necessary for clarity and evaluation.

Proposed paragraph (a)(11) requires that, if the railroad is seeking to deviate from the requirements of section 236.1029 with respect to movement of trains with onboard equipment that has failed en route using the flexibility provided by paragraph (c) of that section, a justification must be provided in the PTCDP. Paragraph (c) of proposed § 236.1029 provides that, in order for a PTC train that operates at a speed above 90 miles per hour to deviate from the operating limitations contain in paragraph (b) of that section, the deviation must be described and justified in the FRA approved PTCDP or PTCSP, or by reference to an Order of Particular Applicability, as applicable. For instance, if Amtrak wished to continue to operate at up to 125 miles per hour with cab signals and automatic train control in the case of failure of onboard ACSES equipment, Amtrak would request to do so based on the applicable language of the Order of Particular Applicability that required installation of that system on portions of the Northeast Corridor. Similarly, a railroad wishing more liberal requirements for a high speed rail system on a dedicated right-of-way could request that latitude by explaining how the safety of all affected train movements would be maintained.

Paragraph (a)(12) requires a complete description of how the PTC system will appropriately and timely enforce all hazard detectors that are interconnected with the PTC system in accordance with § 236.105(c)(3), as may be applicable.

Proposed paragraph (b) specifies the approval standard that will be employed by the Associate Administrator. The PTCDP is not expected to provide absolute assurance to the Associate Administrator that every potential hazard will be eliminated with complete certainty. It only needs to establish that the PTC system meets the appropriate statutory and regulatory requirements for a PTC system required under this subpart, and that there is a reasonable chance that once built, it will meet the required safety standards for its intended use. FRA emphasizes that approval of a PTCDP and issuance of a Type Approval does not constitute final approval to operate the product in revenue service. Such approval only comes when the Associate Administrator issues an applicable PTC System Certification.

Paragraph (c) proposes a time limit on the validity of a Type Approval. Provided that at least one product is certified within the 5 year period after issuance of the Type Approval, the Type Approval remains valid until final retirement of the system. The main purpose of this requirement is to incentivize installation, not just creation, of a PTC system. This paragraph would also allow FRA to periodically clean out its records

relating to Type Approvals and PTCDPs for obsolete PTC systems.

Paragraph (d) proposes the conditions under which a Type Approval may be used by another railroad. These conditions consist of the railroad maintaining a continually updated PTCPVL pursuant to § 236.1023(c) and the railroad providing licensing information associated with the use of the Type Approval. Under paragraph (d), FRA intends to ensure the implementation of the proper technology and not any orphan product using apparently similar, but actually different, technology. When a railroad submits a previously issued Type Approval for its PTC system, FRA expects that all the proper licensing agreements provide for continued use and maintenance of the PTC system are in place. To ensure FRA's confidence in this area, FRA proposes to require each Type Approval submission to include this relevant licensing information. FRA recognizes that there may be various licensing arrangements available relating to the exclusivity and sublicensing of manufacturing or vending of a particular PTC system. There may be other intellectual property variables that may make arrangements even more complex. To adequately capture all applicable arrangements, FRA proposes to generally require the submission of ''licensing information.'' More specific language may preclude FRA's ability to collect information necessary to fulfill its intent. If any of this information were to change, either through any type of sale, transfer, or sublicense of any right or ownership, then FRA would expect the railroad to submit a request for amendment of its PTCDP in accordance with § 236.1021. FRA recognizes that this may be difficult for a railroad to accomplish, given the railroad may not be privy to any intellectual property transactions that may occur outside of its control. In any event, FRA would expect that a railroad would ensure, either through contractual obligation or otherwise, that its vendor or supplier provide it with updated licensing information on a continuing basis. FRA seeks comments on this proposal.

Paragraph (e) proposes to require that a railroad submitting a PTCDP demonstrate that its vendor has a suitable quality control system. This requirement provides protection to the railroad and FRA that there is a reasonable probability that the vendor can design and manufacture the product such that it will meet the design targets specified in paragraph (a). FRA expects that compliance with paragraph (e) will eliminate the operation of a PTC system where its vendor has inadequate quality control procedures and processes to support the proper development of a safety critical product.

Paragraph (f) proposes language retaining the Associate Administrator's ability to impose any conditions necessary to ensure the safety of the public, train crews, and train operations when approving the PTCDP and issuing a Type Approval. While FRA expects that adherence to the remainder of this section's requirements should justify issuance of a Type Approval, FRA also recognizes that there may be situations where other unaccounted for variables may reduce the Associate Administrator's confidence in the PTC system, its manufacturer, supplier, vendor, or operator.

Section 236.1015 PTCSP Content Requirements and PTC System Certification

The PTC Safety Plan (PTCSP) is the core document that provides the Associate Administrator the information necessary to certify that the as-built PTC system fulfills the required statutory PTC functions and is in compliance with the requirements of this subpart. Issuance of a PTC System Certification is contingent upon the approval of the PTCSP by the Associate Administrator. Under the proposed rules, the filing and approval of the PTCSP and issuance of a PTC System Certification is a mandatory prerequisite for PTC system operation in revenue service. Each PTCSP is unique to each railroad and must addresses railroad-specific implementation issues associated with the PTC system identified by the submitted Type Approval. Paragraph (a) proposes language explaining these meanings and limits.

When filing a PTCSP, proposed paragraph (b) proposes to require each railroad to: Include the applicable and approved PTCIP, PTCDP, and Type Approval; describe any changes subsequently made to the PTC system, as reflected in the PTCSP, that would require amendment of the PTCIP or PTCDP; and assure FRA whether the PTC system built is the same PTC system described in the PTCDP and PTCSP. Paragraph (b)(1) effectively merges the approved PTCIP and PTCDP into the PTCSP so that there will be a single ''package'' available for PTC operations and FRA review before and after issuance of a PTC System Certification. If a PTCSP is approved, and the railroad receives a PTC System Certification, all three plans continue to ''live'' and can only be amended in accordance with § 236.1021.

FRA recognizes the possibility that between PTCIP or PTCDP approval, and prior to PTCSP submission, there may be changes to the former two documents. While such changes may only be made in accordance with § 236.1021, documentation of those changes may not be readily apparent to the reader of the PTCSP. Accordingly, under proposed paragraph (b)(2), FRA expects that each PTCSP shall include a clear and complete description of any such changes by specifically and rigorously documenting each variance. Paragraph (b)(2) also proposes to require that the PTCSP include an explanation of each variance's significance. To ensure that there are no other existing variances not documented in the PTCSP, FRA also proposes under this paragraph to require the railroad to attest that there are no further variances. For the same reason, paragraph (b)(3) proposes that, if there have been no changes to the plans or to the PTC system as intended, the railroad be required to attest that there are no such variances.

Proposed paragraph (c) delineates the contents of the PTCSP. The first elements of the PTCSP are the same elements as the PTCDP (and are described more fully in the section by section for 236.1013). If the railroad had already submitted, and FRA had already approved, the PTCDP, then attachment of the PTCDP to the PTCSP should fulfill this requirement.

The additional, proposed railroad specific elements are as follows:

Paragraph (c)(1) proposes to require that the PTCSP include a hazard log comprehensively describing all hazards to be addressed during the life-cycle of the product, including maximum threshold limits for each hazard. For unidentified hazards, the threshold shall be exceeded at one occurrence. In other words, if the hazard has not been predicted, then any single occurrence of that hazard is unacceptable. The hazard log addresses safety-relevant hazards, or incidents or failures that affect the safety and risk assumptions of the PTC system. Safety relevant hazards include events such as false proceed signal indications and false restrictive signal indications. If false restrictive signal indications occur with any type of frequency, they could influence train crew members, roadway workers, dispatchers, or other users to develop an apathetic attitude towards complying with signal indications or instructions from the PTC system, creating human factors problems.

Incidents in which stop indications are inappropriately displayed may also necessitate sudden brake applications

that may involve risk of derailment due to in-train forces. Other unsafe or wrong-side failures which affect the safety of the product will be recorded on the hazard log. The intent of this paragraph is to identify all possible safety-relevant hazards which would have a negative effect on the safety of the product. Right-side failures, or product failures which have no adverse effect on the safety of the product (*i.e.,* do not result in a hazard) would not be required to be recorded on the hazard log.

Paragraph (c)(2) proposes to require that a risk assessment be included in the PTCSP. FRA will use this information as a basis to confirm compliance with the appropriate performance standard. A performance standard specifies the outcome required, but leaves the specific measures to achieve that outcome up to the discretion of the regulated entity. In contrast to a design standard or a technology-based standard that specifies exactly how to achieve compliance, a performance standard sets a goal and lets each regulated entity decide how to meet that goal. An appropriate performance standard should provide reasonable assurance of safe and effective performance by making provision for: (1) Considering the construction, components, ingredients, and properties of the device and its compatibility with other systems and connections to such systems; (2) testing of the product on a sample basis or, if necessary, on an individual basis; (3) measurement of the performance characteristics; and (4) requiring that the results of each or of certain of the tests required show that the device is in conformity with the portions of the standard for which the test or tests were required. Typically, the specific process used to design, verify and validate the product is specified in a private or public standard. The Administrator may recognize all or part of an appropriate standard established by a nationally or internationally recognized standard development organization.

Paragraph (c)(3) proposes to require that the PTCSP include a hazard mitigation analysis. The hazard mitigation analysis must identify the techniques used to investigate the consequences of various hazards and list all hazards addressed in the system hardware and software including failure mode, possible cause, effect of failure, and remedial actions. A safety-critical system must satisfy certain specific safety requirements specified by the system designer or procuring entity. To determine whether these requirements are satisfied, the safety assessor must determine that: (1) Hazards associated with the system have been comprehensively identified; (2) hazards have been appropriately categorized according to risk (likelihood and severity); (3) appropriate techniques for mitigating the hazards have been identified; and (4) hazard mitigation techniques have been effectively applied. *See* Leveson, Nancy G., *Safeware: System Safety and Computers,* (Addison-Wesley Publishing Company, 1995).

FRA does not expect that the safety assessment will prove that a product is absolutely safe. However, the safety assessment should provide evidence that risks associated with the product have been carefully considered and that steps have been taken to eliminate or mitigate them. Hazards associated with product use need to be identified, with particular focus on those hazards found to have significant safety effects. The risk assessment proposed under paragraph (c)(2) must include each hazard that cannot be mitigated by system designs (*e.g.,* human over-reliance of the automated systems) no matter how low its probability may be. After the risk assessment, the designer must take steps to remove them or mitigate their effects. Hazard analysis methods are employed to identify, eliminate, and mitigate hazards. Under certain circumstances, FRA may require an independent third party assessment in accordance with proposed § 236.1017 to review these methods as a prerequisite to FRA approval.

Paragraph (c)(4) also proposes that the PTCSP address safety Verification and Validation procedures as defined under part 236. FRA believes that Verification and Validation for safety are vital parts of the PTC system development process. Verification and Validation require forward planning. Consequently, the PTCSP should identify the testing to be performed at each stage of development and the levels of rigor applied during the testing process. FRA will use this information to ensure that the adequacy and coverage of the tests are appropriate.

Paragraph (c)(5) proposes to require the railroad to include in its PTCSP the training, qualification, and designation program for workers regardless of whether those railroad employees will perform inspection, testing, and maintenance tasks involving the PTC system. FRA believes many benefits accrue from the investment in comprehensive training programs and are fundamental to creating a safe workforce. Effective training programs can result in fewer instances of human casualties and defective equipment, leading to increased operating efficiencies, less troubleshooting, and decreased costs. FRA expects any training program to include employees, supervisors, and contractors engaged in railroad operations, installation, repair, modification, testing, or maintenance of equipment and structures associated with the product.

Paragraph (c)(6) proposes to require the PTCSP to identify specific procedures and test equipment necessary to ensure the safe operation, installation, repair, modification and testing of the product. Requirements for operation of the system must be succinct in every respect. The procedures must be specific about the methodology to be employed for each test to be performed that is required for installation, repair, or modification including documenting the results thereof. FRA will review and compare the repair and test procedures for adequacy against existing similar requirements prescribed for signal and train control systems. FRA intends to use this information to ascertain whether the product will be properly installed, maintained, tested, and repaired.

Paragraph (c)(7) proposes that each railroad develop a manual covering the requirements for the installation, periodic maintenance and testing, modification, and repair for its PTC system. The railroad's Operations and Maintenance Manual must address the issues of warnings and describe the warning labels to be placed on each piece of PTC system equipment as necessary. Such warnings include, but are not limited to: Means to prevent unauthorized access to the system; warnings of electrical shock hazards; cautionary notices about improper usage, testing, or operation; and configuration management of memory and databases. The PTCSP should provide an explanation justifying each such warning and an explanation of why there are no alternatives that would mitigate or eliminate the hazard for which the warning is placed.

Paragraph (c)(8) proposes to require that the PTCSP identify the various configurable applications of the product, since this rule mandates use of the product only in the manner described in its PTCDP. Given the importance of proper configuration management in safety-critical systems, FRA believes it is essential that railroads learn of and take appropriate configuration control of hardware and software. FRA believes that a requirement for configuration management control will enhance the safety of these systems and ultimately provide other benefits to the railroad as

well. Under this proposed paragraph, railroads are responsible—through its applicable Operations and Maintenance Plan and other supporting documentation maintained throughout the system's life-cycle—for all changes to configuration of their products in use, including both changes resulting from maintenance and engineering control changes, which result from manufacturer modifications to the product. Since not all railroads may experience the same software faults or hardware failures, the configuration management and fault reporting tracking system play a crucial role in the ability of the railroad and the FRA to determine and fully understand the risks and their implications. Without an effective configuration management tracking system in place, it is difficult, if not impossible, to fairly evaluate risks associated with a product over the life of the product.

Paragraph (c)(9) proposes to require the railroad to develop comprehensive plans and procedures for product implementation. Implementation (field validation or cutover) procedures must be prepared in detail and identify the processes necessary to verify that the PTC system is properly installed and documented, including measures to provide for the safety of train operations during installation. FRA will use this information to ascertain whether the product will be properly installed, maintained, and tested. FRA also believes that configuration management should reduce disarrangement issues. Further, configuration management will reduce the cost of troubleshooting by reducing the number of variables and will be more effective in promoting safety.

Paragraph (c)(10) proposes to require the railroad to provide a complete description of the particulars concerning measures required to assure that the PTC system, once implemented, continues to provide the expected safety level without degradation or variation over its life-cycle. The measures specifically provide the prescribed intervals and criteria for the following: testing; scheduled preventive maintenance requirements; procedures for configuration management; and procedures for modifications, repair, replacement and adjustment of equipment. FRA intends to use this information, among other data, to monitor the PTC system to assure it continually functions as intended.

Paragraph (c)(11) proposes to include in each PTCSP a description of each record concerning safe operation. Recordkeeping requirements for each product are discussed in proposed § 236.1037.

Paragraph (c)(12) proposes to require a safety analysis of unintended incursions into a work zone. Measuring incursion risks is a key safety risk assumption. Failing to identify incursion risk can have the effect of making a system seem safer on paper than it actually is. The requirements set forth in this paragraph attempt to mandate design consideration of incursion protection at an early stage in the product development process. The totality of the arrangements made to prevent unintended incursions or operation at higher than authorized speed within the work zone must be analyzed. That is, in addition to the functions of the PTC system, the required actions for dispatchers, train crews, and roadway workers in charge must be evaluated. Regardless of whether a PTC system has been previously approved or recognized, FRA will not accept a system that allows a single point human failure to defeat the essential protection intended by the Congress. *See* NTSB Recommendations R–08–05 and R–08–06. FRA believes that exposure should be identified because increases in risk due to increased exposure could be easily distinguished from increases in risk due solely to implementation and use of the proposed PTC system.

In the past, little attention was given to formalizing incursion protection procedures. Training for crews has also not been uniform among organizations, and has frequently received inadequate attention. As a result, a variety of procedures and techniques evolved based on what has been observed or what just seemed correct at the time. This lack of structure, standardization, and formal training is inconsistent with the goal of increasing the safety and efficiency.

Paragraph (c)(13) proposes to require a more detailed description of any alternative arrangements provided under proposed § 236.1011(a)(10), pertaining to at grade rail-to-rail crossings.

Paragraph (c)(14) proposes to require a complete description of how the PTC system will enforce mandatory directives and signal indications, unless already addressed in the PTCDP. FRA recognizes that all systems will enforce all signal indications; however, the PTCDP must describe where the architecture of the system performs this function.

Proposed paragraph (c)(15) refers to the requirement of § 236.1019(e) that the PTCSP is aligned with the PTCIP, including any amendments.

Under proposed § 236.1029(b), FRA proposes to require certain limitations on PTC trains operating over 90 miles per hour. Under § 236.1029(c), FRA provides railroads with an opportunity to deviate from those limitations if the railroad describes and justifies the deviation in its PTCDP, PTCSP, or by reference to an Order of Particular Applicability, as applicable. Thus, proposed paragraph (c)(16) to § 236.1015 reminds railroads that this is one of the optional elements that may be included in a PTCSP. This need may also be addressed through review of the PTCDP, and FRA reserves the right to so provide in the final rule.

Railroads are required under § 236.1005(c) to submit a complete description of its compliance regarding hazard detector integration and under §§ 236.1005(g)–(k) to submit a temporary rerouting plan in the event of emergencies and planned maintenance. Railroads must also submit a document indicating any alternative arrangements for each rail at-grade crossing not adhering to the table under § 236.1005(a)(1)(i). Proposed paragraphs (c)(17), (c)(18), and (c)(19) to § 236.1015 reminds railroads that such requirements must be fulfilled with the submission of the PTCSP. For example, under proposed paragraph (c)(18), FRA expects each temporary rerouting plan to explain the host railroad's procedure relating to detouring the applicable traffic. In other words, FRA expects that each temporary rerouting plan address how the host railroad will choose the track that traffic will be rerouted onto. For instance, the plan should explain the factors that will be considered in determining whether and how the railroad should take advantage of temporary rerouting. FRA remains concerned about the unnecessary commingling of PTC and non-PTC traffic on the same track and expects each temporary rerouting plan to address this possibility. More specifically, each plan should describe how the railroad expects to make decisions to reroute non-PTC train traffic onto a PTC line, especially where another non-PTC line may be available. While FRA recognizes each railroad may seek to use the most cost effective route, FRA expects the railroad to also consider the level of risk associated with that route.

In paragraph (d), FRA proposes to state the criteria that FRA will refer to when evaluating the PTCSP, depending upon the underlying technical approach. Whereas in subpart H the safety case is evaluated to determine whether it demonstrates with a high degree of confidence that relevant risk

will be no greater under the new product than previously, the statutory mandate for PTC calls for a different approach. In crafting the proposed approach, FRA has attempted to limit requirements for quantitative risk assessment to those situations where the technique is truly needed. Regardless of the type of PTC system, the safety case for the system must demonstrate that it will reliably execute all of the functions required by this subpart (particularly those provided under proposed §§ 236.1005 and 236.1007). With this foundation, the additional criteria that must be met depend upon the type of PTC technology to be employed.

It is FRA's understanding that PTC systems may be categorized as one of the following four system types: Non-vital overlay; vital overlay; standalone; and mixed. Initially, however, all PTC systems will have some features that are not fully fail-safe in nature, even if onboard processing and certain wayside functions are fully fail-safe. Common causes include surveying errors of the track database, errors in consist weight or makeup from the railroad information technology systems, and the crew input errors of critical operational data. To the extent computer-aided dispatching systems are the only check on potential dispatcher error in the creation or inappropriate cancellation of mandatory directives, some room for undetected wrong-side failure will continue to exist in this function as well. This issue is addressed under paragraph (g) of this section.

Proposed paragraph (d)(1) specifies the required behavior for non-vital overlay systems. Based on previous experience with non-vital systems, FRA believes it is well within the technical capability of the railroads to reduce the level of risk on any particular track segment to a level of risk 80% lower than the level of risk prior to installation of PTC on that segment. For subsequent PTC system installations on the same line segment, FRA recognizes that requiring an additional 80% improvement may not be technically or economically practical. Therefore, FRA is only proposing that an entity installing or modifying an existing PTC system need only demonstrate that the level of safety is equal to, and preferably greater than, the level of safety of the prior PTC system. The risk that must be reduced is the risk against which the PTC functionalities are directed, assuming a high level of availability. Note that the required functionalities themselves do not call for elimination of all risk of mishaps. It is scope of risk reduction that the functionalities describe that becomes the 100% universe which is the basis of comparison. Although it is understood that the system will endeavor to eliminate 100% of this risk—meaning that if the system worked as intended every time and was always available, 100% of the target risk would be eliminated—the analysts will need to account for cases where wrong side failure of the technology is coincident with a human failure potentially induced by reliance on the technology. Since, within an appropriate conservative engineering analysis (*i.e.,* pro forma analysis), non-vital processing has the theoretical potential to result in more failures than will typically be experienced, a 20% margin is provided. In preparing the PTCSP, the railroad will want to affirmatively address how training and oversight—including programs of operational testing under 49 CFR 217.9—will reduce the potential for inappropriate reliance by those charged with functioning in accordance with the underlying method of operation.

The 80% reduction in risk for PTC preventable accidents must be demonstrated by an appropriate risk analysis acceptable to the Associate Administrator and must address all intended track segments upon which the system will be installed. Again, FRA does not expect, or require, that these types of systems will prevent all wrong side failures. However, FRA expects that the systems will be designed to be robust, all pertinent risk factors (including human factors) will be fully addressed, and that no corners will be cut to ''take advantage'' of the nominal allowance provided for non-vital approaches. FRA also encourages those using non-vital approaches to preserve as much as possible the potential for a transition to vital processing.

Proposed paragraph (d)(2) addresses vital overlays. Unlike a non-vital system, the vital system must be designed to address, at a minimum, the factors delineated in Appendix C. The railroad and their vendors are encouraged to carry out a more thorough design analysis addressing any other potential product specific hazards. FRA cannot overemphasize that vital overlay system designs must be fully designed to address the factors contained in Appendix C. The associated risk analysis supporting this design analysis demonstrating compliance may be accomplished using any of the risk analysis approaches in subpart H, including abbreviated risk analysis.

Proposed paragraph (d)(3) addresses stand-alone PTC systems that are used to replace existing methods of operations. The PTCSP design and risk analysis submitted to the Associate Administrator must show that the system does not introduce any new hazards that have not been acceptably mitigated, based upon all proposed changes in railroad operation. The required analysis for standalone systems is much more comprehensive than that required for vital overlay systems, since it must provide sufficient information to the Associate Administrator to make a decision with a high degree of confidence. FRA will uniquely and separately consider each request for standalone operations, and will render decisions in the context of the proposed operation and the associated risks. FRA recognizes that application of this standard to a new rail system for which there is no clear North American antecedent could present a conceptual challenge. FRA invites comments regarding how best to frame the risk assessment showing for a standalone system applied to a new rail operation.

Proposed paragraph (d)(4) addresses mixed systems (*i.e.,* systems that include a combination of the systems identified in paragraphs (d)(1) through (d)(3). Because of the inherent complexity of these systems, FRA will determine an appropriate approach to demonstrating compliance after consultation with the railroad. Any approach will, of course, require that the system perform the PTC requirements as proposed in §§ 236.1005 and 236.1007.

Paragraph (e) discusses proposed factors that the Associate Administrator will consider in reviewing the PTCSP. In general, PTC systems will have some features that are not failsafe in nature. Examples include surveys of the track database, errors in consist data from the railroad such as weight and makeup, and crew input errors. FRA participation in the design and testing of the PTC system product helps FRA to better understand the strengths and weaknesses of the product for which approval is requested, and facilitates the approval process.

The railroad must establish through safety analysis that its assertions are true. This standard places the burden on the railroad to demonstrate that the safety analysis is accurate and sufficiently supports certification of the PTC system. The FRA Associate Administrator will determine whether the railroad's case has been made. As provided in subpart H, FRA believes that final agency determinations under this new subpart I should also be made at the technical level, rather than the policy level, due to the complex and sometimes esoteric subject matters associated with risk analysis and

evaluation. This is particularly appropriate in light of the RSIA08's designation of the Associate Administrator for Railroad Safety as the Chief Safety Officer of FRA. When considering the PTC system's compliance with recognized standards in product development, FRA will weigh appropriate factors, including: The use of recognized standards in system design and safety analyses; the acceptable methods in risk estimates; the proven safety records for proposed components; and the overall complexity and novelty of the product design. In those cases where the submission lacks information the Associate Administrator deems necessary to make an informed safety decision, FRA will solicit the data from the railroad. If the railroad does not provide the requested information, FRA may determine that a safety hazard exists. Depending upon the amount and scope of the missing data, PTCSP approval, and the subsequent system certification, may be denied.

While paragraph (e) summarizes how FRA intends to evaluate the risk analysis, proposed paragraph (f) applies specifically to cases where a PTC system has already been installed and the railroad subsequently wants to put in a new PTC system. Paragraph (f) re-emphasizes that FRA policy regarding the safety of PTC systems is not, and cannot expect to be, static. Rather, FRA policy may evolve as railroad operations evolve, operating rules are refined, related hazards are addressed (*e.g.,* broken rails), and other readily available options for risk reduction emerge and become more affordable. FRA embraces the concept of progressive improvement and expects that when new systems are installed to replace existing systems that actual safety outcomes equal or exceed those for the existing systems.

Section 236.1017 Independent Third Party Review of Verification and Validation

As previously noted in the discussion of proposed § 236.1009(e), FRA may require a railroad to engage in an independent assessment of its PTC system. In the event an independent assessment is required, § 236.1017 proposes the applicable rules and procedures.

Proposed paragraph (a) establishes factors considered by FRA when requiring a third-party assessment. FRA will attempt to make a determination of the necessary level of third party assessment as early as possible in the approval process. However, based on issues that may arise during the development and testing processes, or during the detailed technical reviews of the PTCDP and PTCSP, FRA may deem it necessary to require a third party assessment at any time during the review process.

Proposed paragraph (b) is intended to make it clear that it is FRA that will make the determination of the acceptability of the independence of the third party to avoid any potential issues downstream regarding the acceptability of the assessor's independence. If a third party assessment is required, each railroad is encouraged to identify in writing what entity it proposes to utilize as its third party assessor. Compliance with paragraph (b) is not mandatory. However, if FRA determines that the railroad's choice of a third party does not meet the level of independence contemplated under proposed paragraph (c), then the railroad will be obligated to have the assessment repeated, at its expense, until it has been completed by a third party suitable to FRA.

Paragraph (c) proposes a definition of the term ''independent third party'' as used in this section. It limits independent third parties to those that are compensated by the railroad or an association on behalf of one or more railroads that is independent of the PTC system supplier. FRA believes that requiring the railroad to compensate a third party will heighten the railroad's interest in obtaining a quality analysis and will avoid ambiguous relationships between suppliers and third parties that could indicate possible conflicts of interest.

Proposed paragraph (d) explains that the minimum requirements of a third party audit are outlined in Appendix F (which is modeled on current Appendix D, which is used in conjunction with subpart H) and that FRA has discretion to limit the extent of the third party assessment. FRA intends to limit the scope of the assessment to areas of the safety Verification and Validation as much as possible, within the bounds of FRA's regulatory obligations. This will allow reviewers to focus on areas of greatest safety concern and eliminate any unnecessary expense to the railroad. In order to limit the number of third-party assessments, FRA first strives to inform the railroad as to what portions of a submittal could be amended to avoid the necessity and expense of a third-party assessment altogether. However, FRA wishes to make it clear that Appendix F represents minimum requirements and that, if circumstances warrant, FRA may expand upon the Appendix F requirements as necessary to enable FRA to render a decision that is in the public interest (*i.e.,* if FRA is unable to certify the system without the additional information).

Section 236.1019 Main Line Track Exceptions

The RSIA08 generally defines ''main line'' as ''a segment of railroad tracks over which 5,000,000 or more gross tons of railroad traffic is transported annually.'' *See* 49 U.S.C. 20157(i)(2). However, FRA may also define ''main line'' by regulation ''for intercity rail passenger transportation or commuter rail passenger transportation routes or segments over which limited or no freight railroad operations occur.'' *See* 49 U.S.C. 20157(i)(2)(B); 49 CFR 1.49(oo). FRA recognizes that there may be circumstances where certain statutory PTC system implementation and operation requirements are not practical and provide no significant safety benefits. In those circumstances, FRA proposes to exercise its statutory discretion provided under 49 U.S.C. 20157(i)(2)(B).

In accordance with the authority provided by the statute and with carefully considered recommendations from the RSAC, FRA proposes to consider requests for designation of track over which rail operations are conducted as ''other than main line track'' for passenger and commuter railroads, or freight railroads operating jointly with passenger or commuter railroads. Such relief may be granted only after request by the railroad or railroads filing a PTCIP and approval by the Associate Administrator.

Paragraph (a), therefore, proposes to require the submittal of a main line track exclusion addendum (MTEA) to any PTCIP filed by a railroad that seeks to have any particular track segment deemed as other than main line. Since the statute only provides for such regulatory flexibility as it applies to passenger transportation routes or segments which limited or no freight railroad operations occur, only a passenger railroad may file an MTEA as part of its PTCIP. This may include a PTCIP jointly filed by freight and passenger railroads. In fact, FRA expects that in the case of joint operations, only one MTEA should be agreed upon and submitted by the railroads filing the PTCIP. After reviewing a submitted MTEA, FRA may provide full or partial approval for the requested exemptions.

Each MTEA must clearly identify and define the physical boundaries, use, and characterization of the trackage for which exclusion is requested. When describing the tracks' use and characterization, FRA expects the requesting railroad or railroads to include copies of the applicable track

and signal charts. Ultimately, FRA expects each MTEA to include information sufficiently specific to enable easy segregation between main line track and non-main line track. In the event the railroad subsequently requests additional track to be considered for exclusion, a well-defined MTEA should reduce the amount of future information required to be submitted to FRA. Moreover, if FRA decides to grant only certain requests in an MTEA, the portions of track for which FRA has determined should remain considered as main line track can be easily severed from the MTEA. Otherwise, the entire MTEA, and thus its concomitant PTCIP, may be entirely disapproved by FRA, increasing the risk of the railroad or railroads not meeting its statutory deadline for PTC implementation and operation.

For each particular track segment, the MTEA must also provide a justification for such designation in accordance with paragraphs (b) or (c) of this section.

Proposed paragraph (b) specifically addresses the conditions for relief for passenger and commuter railroads with respect to passenger-only terminal areas. As noted previously in the analysis of § 236.1005(b), FRA proposes to except from the definition of main line any track within a yard used exclusively by freight operations moving at restricted speed. In those situations, operations are usually limited to preparing trains for transportation and do not usually include actual transportation. FRA does not propose to extend this automatic exclusion to yard or terminal tracks that include passenger operations. Such operations may also include the boarding and disembarking of passengers, heightening FRA's sensitivity to safety and blurring the lines between what defines ''transportation'' and ''preparing for transportation.'' Moreover, while FRA could not expend its resources to review whether a freight-only yard should be deemed other than main line track, FRA believes that the relatively lower number of passenger yards and terminals would allow for such review. Accordingly, FRA believes that it is appropriate to review these circumstances on a case-by-case basis.

During the PTC Working Group discussions, the major passenger railroads requested an exception for tracks in passenger terminal areas because of the impracticability of installing PTC. These are locations where signal systems govern movements over very complex special track work divided into short signal blocks. Operating speeds are low (not to exceed 20 miles per hour), and locomotive engineers moving in this environment expect conflicting traffic and restrictive signals. Although low-speed collisions do occasionally occur in these environments, the consequences are low; and the rate of occurrence is very low in relation to the exposure. It is the nature of current-generation PTC systems that they work with averages in terms of stopping distance and use conservative braking algorithms. Applying this approach in congested terminals would add to congestion and frustrate efficient passenger service, in the judgment of those who operate these railroads. The density of wayside infrastructure required to effect PTC functions in these terminal areas would also be exceptionally costly in relation to the benefits obtained. FRA agrees that technical solutions to address these concerns are not presently available. FRA does believe that the appropriate role for PTC in this context is to enforce the maximum allowable speed (which is presently accomplished in cab signal territory through use of automatic speed control, a practice which could continue where already in place).

If FRA grants relief, the proposed conditions of (b)(1), (b)(2), or (b)(3), as applicable, must be strictly adhered to. These three conditions represent the minimum conditions FRA believes is necessary for safe operations. FRA reserves the right to add more restrictive conditions if necessary to provide for the safety of the public and train crews. If FRA approves a MTEA and the railroad subsequently violates any of the applicable conditions, civil penalties may apply.

Under paragraph (b)(1), FRA proposes to limit relief under paragraph (b) to operations that do not exceed 20 miles per hour. The PTC Working Group agreed upon the 20 miles per hour limitation, instead of requiring restricted speed, because the operations in question will be by signal indication in congested and complex terminals with short block lengths and numerous turnouts. FRA agrees with the PTC Working Group that the use of restricted speed in this environment would exacerbate congestion, delay trains, and diminish the quality of rail passenger service.

Moreover, when trains on the excluded track are controlled by a locomotive with an operative PTC onboard apparatus, FRA proposes to require that PTC system component to enforce the regulatory speed limit or actual maximum authorized speed, whichever is less. While the actual track may not be outfitted with a PTC system in light of a MTEA approval, FRA believes it would be nevertheless prudent to require such enforcement when the technology is available on the operating locomotives. This can be accomplished in cab signal territory using existing automatic train stop technology and outside of cab signal territory by mapping the terminal and causing the onboard computer to enforce the maximum speed allowed.

Under paragraph (b)(2), FRA proposes to also limit relief under paragraph (b) to operations that enforce interlocking rules. Under interlocking rules, trains are prohibited from moving in reverse directions without dispatcher permission on track where there are no signal indications. FRA believes that such a restriction would minimize the potential for a head-on impact.

Also, under proposed paragraph (b)(3), such operations would only be allowed in yard or terminal areas where no freight operations are permitted. While the definition of main line may not include yard tracks used solely by freight operations, FRA does not propose to extend any relief or exception to tracks within yards or terminals shared by freight and passenger operations. The collision of a passenger train with a freight consist is typically a more severe condition because of the greater mass of the freight equipment.

Paragraph (c) proposes the conditions under which joint limited passenger and freight operations may occur on defined track segments without the requirement for installation of PTC. This paragraph proposes three alternative paths to the main line exception.

First, under paragraph (c)(1), an exception may be available where both the freight and passenger trains are limited to restricted speed. Such operations are feasible only for short distances, and FRA would examine the circumstances involved to ensure that the exposure is limited and that appropriate operating rules and training are in place.

Second, under paragraph (c)(2), FRA will consider an exception where temporal separation of the freight and passenger operations can be ensured. A more complete definition of temporal separation is provided in paragraph (d). Temporal separation of passenger and freight services reduces risk because the likelihood of a collision is reduced (*e.g.,* due to freight cars engaged in switching that are not properly secured) and the possibility of a relatively more severe collision between a passenger train and much heavier freight consist is obviated.

Third, under paragraph (c)(3), FRA will consider commingled freight and passenger operations provided that a jointly agreed risk analysis is provided

by the passenger and freight railroads, and the level of safety is the same as that which would be provided under one of the two prior options selected as the base case. FRA seeks comments on whether FRA or the subject railroad should determine the appropriate base case. FRA recognizes that there may be situations where temporal separation may not be possible. In such situations, FRA may allow commingled operations provided the risk to the passenger operation is no greater than if the passenger and freight trains where operating under temporal separation or with all trains limited to restricted speed. For an exception to be made under paragraph (c)(3), FRA requires a risk analysis jointly agreed to and submitted by the applicable freight and passenger services. This ensures that the risks and consequences to both parties have been fully analyzed, understood, and mitigated to the extent practical.

Paragraph (d) proposes the definition of temporal separation with respect to paragraph (c)(2). The temporal separation approach is currently used under the FRA–Federal Transit Administration Joint Policy on Shared Use, which permits co-existence of light rail passenger services (during the day) and local freight service (during the nighttime). *See Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems,* 65 FR. 42,526 (July 10, 2000); *FRA Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment,* 65 FR 42529 (July 10, 2000). Conventional rail technology and secure procedures are used to ensure that these services do not commingle. Amtrak representatives in the PTC Working Group were confident that more refined temporal separation strategies could be employed on smaller railroads that carry light freight volumes and few Amtrak trains (*e.g.,* one train per day or one train per day in each direction). The Passenger Task Force agreed.

Proposed paragraph (e) ensures that by the time the railroad submits its PTCSP, it has made no unapproved changes to the MTEA and that the PTC system, as implemented, reflects the PTCIP and its MTEA. Under the proposed rule, the PTCSP shall reflect the PTCIP, including its MTEA, as it was approved or how it has been modified in accordance with proposed § 236.1021. FRA believes that it is also important that the railroad attest that no other changes to the documents or to the PTC system, as implemented, have been made.

FRA understands that as a railroad implements its PTC system in accordance with its PTCIP or even after it receives PTC System Certification, the railroad may decide to modify the scope of which tracks it believes to be other than main line. To effectuate such changes, paragraph (f) proposes to require FRA review. In the case that the railroad believes that such relief is warranted, the railroad may file in accordance with proposed § 236.1021 a request for amendment of the PTCIP, which will eventually be incorporated into the PTCSP upon PTCSP submission. Each request, however, must be fully justified to and approved by the Associate Administrator before the requested change can be made to the PTCIP. If such a RFA is submitted simultaneously with the PTCSP, the RFA may not be approved, even if the PTCSP is otherwise acceptable. A change made to a MTEA subsequent to FRA approval of its associated PTCIP that involves removal or reduction in functionality of the PTC system is treated as a material modification. In keeping with traditional signaling principles, such requests must be formally submitted for review and approval by FRA.

Section 236.1021 Discontinuances, Material Modifications, and Amendments

FRA recognizes that after submittal of a plan or implementation of a train control system, the subject railroad may have legitimate reasons for making changes in the system design and the locations where the system is installed. In light of the statutory and regulatory mandates, however, FRA believes that the railroad should be required to request FRA approval prior to effectuating certain changes. Section 236.1021 proposes the scope and procedure for requesting and approving those changes. For example, all requests for covered changes must be made in a request for amendment (RFA) of the subject PTC system or plan. While § 236.1021 includes lengthy descriptions of what changes may, or may not, require FRA approval, there are various places elsewhere in subpart I that also require the filing of a RFA.

Under paragraph (a), FRA proposes to require FRA approval prior to certain PTC system changes. FRA expects that if a railroad wants to make a PTC system change covered by subpart I, then any such change would result in noncompliance with one of the railroad's plans approved under this subpart. For instance, if a railroad seeks to modify the geographical limits of its PTC implementation, such changes would not be reflected in the PTCIP. Accordingly, under paragraph (a), after a plan is approved by FRA and before any change is made to the PTC system's development, implementation, or operation, FRA proposes that the railroad file a RFA to the subject plan.

FRA considers an amendment to be a formal or official change made to the PTC system or its associated PTCIP, PTCDP, or PTCSP. Amendments can add, remove, or update parts of these documents, which may reflect proposed changes to the development, implementation, or operation of its PTC system. FRA believes that an amending procedure provides a simpler and cleaner option than requiring the railroad to file an entirely new plan.

While the railroad may develop a RFA without FRA input or involvement, FRA believes that it is more advantageous for the railroad to informally confer with FRA before formally submitting its RFA. If FRA is not involved in the drafting process, FRA may not have a complete understanding of the system, making it difficult for FRA to evaluate the impact of the proposed changes on public safety. After RFA submission, all applicable correspondence between FRA and the railroad must be made formally in the associated docket, as further discussed below. In such a situation, FRA's review may take a significantly longer time than usual. If FRA continues to not understand the impact, it may request a third party audit, which would only further delay a decision on the request. Accordingly, FRA believes it is more advantageous for the railroad drafting an RFA to informally confer with FRA before its formal submission of the change request. The railroad would then be provided an opportunity to discuss the details of the change and to assure FRA's understanding of what the railroad wishes to change and of the change's potential impact.

Paragraph (b) proposes a mechanism for requesting such change. Once the RFA is approved, the railroad may—and, in fact, is required under paragraph (b)—to adopt those changes into the subject plan and immediately ensure that its PTC complies with the plan, as amended. FRA expects that each PTC system accurately reflects the information in its associated approved plans. FRA believes that this requirement will also incentivize railroads to make approved changes as quickly as possible. Otherwise, if a railroad delays in implementing the changes reflected in an approved RFA,

FRA may find it difficult to enforce its regulations until implementation is completed, since they plans and PTC system to not accurately and adequately reflect each other. In such circumstances, railroads may be assessed a civil penalty for violating its plan or for falsifying records.

Any change to a PTCIP, PTCDP, or PTCSP, which may include removal or discontinuance of any signal system, may not take effect until after FRA has approved the corresponding submitted or amended PTCIP, PTCDP, or PTCSP. FRA may provide partial or conditional approval. Until FRA has granted appropriate relief or approval, the railroad may not make the change, and once a requested change has been made, the railroad must comply with requested change.

FRA recognizes that a railroad may wish to remove an existing train control system due to new and appropriate PTC system implementation. For train control systems existing prior to promulgation of subpart I, any request for a material modification or discontinuance must be made pursuant to part 235. FRA proposes in paragraph (c), however, to provide the railroads with an opportunity to instead request such changes in accordance with proposed § 236.1021. FRA believes that this proposal would reduce the number of required filings and would otherwise simplify the process requesting material modifications or discontinuances.

Paragraph (d) proposes the minimum information required to be submitted to FRA when requesting an amendment. While FRA proposes to promulgate procedural rules here different than those in part 235, FRA expects that the same or similar information be provided. Accordingly, under paragraph (d)(1), the RFA must contain the information required in 235.10. Paragraph (d)(1) also requires the railroad to submit, upon FRA request, certain additional information, including the information referenced in § 235.12. Paragraphs (d)(2) through (d)(7) provide further examples of such information. While such information may only be required upon request, FRA urges each railroad to include this information in its RFA to help expedite the review process.

FRA believes that proposed paragraphs (d)(2) through (d)(6) are self-explanatory. However, according to proposed paragraph (d)(7), FRA may require with each RFA an explanation of whether each change to the PTCSP is planned or unplanned. Planned changes are those that the system developer and the railroad have included in the safety analysis associated with the PTC system, but have not yet implemented. These changes provide enhanced functionality to the system, and FRA strongly encourages railroads to include PTC system improvements that further increase safety. A planned change may require FRA approved regression testing to demonstrate that its implementation has not had an adverse affect on the system it is augmenting. Each planned change must be clearly identified as part of the PTCSP, and the PTCSP safety analysis must show the affect that its implementation will have on safety.

Unplanned changes are those either not foreseen by the railroad or developer, but nevertheless necessary to ensure system safety, or are unplanned functional enhancements from the original core system. The scope of any additional necessary work necessary to ensure safety may depend upon when in the development cycle phase the changes are introduced. For instance, if the PTCDP has not yet been submitted to FRA, no FRA involvement is required. However if the PTCDP has been submitted to FRA, or if the change impacts the safety functionality of the system once a Type Approval has been issued, and a PTCSP has not yet submitted, the railroad must submit a RFA requesting and documenting that change. Once FRA approves that RFA, FRA expects the subsequently filed PTCSP to account for the change in analysis.

If the change is made after approval of the PTCSP and the system has been certified by FRA, a RFA must be submitted to FRA for approval. Because this requires significant effort by FRA and the railroad, FRA expects that every effort will be made to eliminate the need for unplanned changes. If the railroad and the vendor submit unplanned safety related changes that FRA believes are a significant amount or inordinately complex, FRA may revoke any approvals previously granted and disallow the use of the product until such time the railroad demonstrates the product is sufficiently mature.

Paragraph (e) proposes that if a RFA is submitted for a discontinuance or a material modification to a portion or all of its PTC system, a notice of its submission shall be published in the **Federal Register**. Interested parties will be provided an opportunity to comment on the RFA, which will be located in an identified docket.

Proposed paragraph (f) makes it clear that FRA will consider all impacts on public safety prior to approval or disapproval of any request for discontinuance, modification, or amendment of a PTC system and any associated changes in the existing signal system that may have been concurrently submitted. While the economic impact to the affected parties may be considered by the FRA, the primary and final deciding factor on any FRA decision is safety. FRA will consider not only how safety is affected by installation of the system, but how safety is impacted by the failure modes of the system.

The purpose of proposed paragraph (g) is to emphasize the right of FRA to unilaterally issue a new Type Approval, with whatever conditions are necessary to ensure safety based on the impact of the proposed changes.

In proposed paragraph (h), FRA makes clear that it considers any implemented PTC system to be a safety device. Accordingly, the discontinuance, modification, or other change of the implemented system or its geographical limits will not be authorized without prior FRA approval. While this requirement primarily applies to safety critical changes, FRA believes that they should also apply to all changes that will affect interoperability. FRA seeks comments on this issue. The principles expressed in the paragraph parallel those embodied in part 235, which implements 49 U.S.C. 20502(a).

That said, FRA recognizes that there are a limited number of situations where changes of the PTC system may not have an adverse impact upon public safety. Specific situations where prior FRA approval is required are proposed in paragraphs (h)(1) through (h)(4).

Paragraph (i) proposes the exceptions from the requirement for prior approval in cases where the discontinuance of a system or system element will be treated as pre-approved, as when a line of railroad is abandoned.

Paragraph (j) proposes exceptions for certain lesser changes that are not expected to materially affect system risk, such as removal of an electric lock from a switch where speed is low and trains are not allowed to clear.

Paragraph (k) proposes additional exceptions consisting of modifications associated with changes in the track structure or temporary construction. FRA notes that only temporary removal of the PTC system without prior FRA approval is allowed to support highway rail separation construction or damage to the PTC system by catastrophic events. In both cases, the PTC system must be restored to operation no later than 6 months after completion of the event.

Section 236.1023 Errors and Malfunctions

Because PTC systems are approved, in part, based on certain assumptions regarding expected failure modes and frequencies, reporting and recording of errors and malfunctions takes on critical importance. If the number of errors and malfunctions exceeds those originally anticipated in the design, or errors and malfunctions that were not predicted are observed to occur, the validity of the risk analysis becomes suspect. Since not all railroads may experience the same software faults or hardware failures, the developer's development, configuration management, and fault reporting tracking system play a crucial role in the ability of the railroad and FRA to determine and fully understand the risks and their implications. Without an effective configuration management tracking system in place, it is difficult, if not impossible, to fairly evaluate PTC system risks during the system's life cycle.

In the event of a safety-essential PTC system component failing to perform as intended, FRA intends to propose under § 236.1023 that the cause be identified and corrective action be taken without undue delay. Until the repair is completed, the railroad and vendors are required to take appropriate measures to assure the safety of train movements, roadway workers, and on-track equipment. This requirement mirrors the current requirements of 49 CFR 236.11, which applies to all signal system components. FRA recognizes that there may be situations where reducing the severity of such hazards will suffice for an equivalent reduction in risk. For example, a reduction in operating speeds may not reduce the frequency of certain hazards involving safety-critical products, but it may reduce the severity of such hazards in most cases.

Paragraph (a) proposes a direct obligation on suppliers to report safety-relevant failures, including ''wrong-side'' failures and other failures significantly impacting availability, where the PTCSP indicates availability to be a material issue in the safety performance of the larger railroad system. FRA expects each applicable supplier to identify the problem and the necessary corrective actions, recommended risk mitigations, and provide an estimated amount of time it expects to complete the corrective actions. FRA believes that it should be informed to ensure public safety in any case where a commercial dispute (*e.g.,* over liability) might disrupt communication between a railroad and supplier.

Paragraph (b) proposes a similar responsibility on the part of the railroad to report safety relevant failures to the supplier and FRA, and to keep the vendor and FRA apprised of any subsequent failures. To aid FRA in understanding the scope of a problem on a railroad, and to aid the railroad in communicating any PTC system failures to the appropriate vendor, paragraph (c) proposes to require that each railroad keep a currently updated PTC Product Vendor List (PTCVPL), which must identify each supplier of PTC equipment on its railroad.

Paragraph (d) proposes the requirement that each railroad identify the procedures for action upon notification from the manufacturer of a safety-critical upgrade, patch, or revision performed within the scope of the applicable PTCDP. FRA expects that when issues are discovered that may adversely affect the safe operation of the system, regardless if the railroad has experienced the problem, the railroad will take corrective action without undue delay (*see* § 236.11). FRA believes this is necessary to ensure that each railroad promptly addresses applicable errors to maintain a common safety baseline by performing component changes that, if left uncorrected, would increase risk or interfere with the safety of train operations. If the action were to take a significant amount of time, FRA proposes to require the railroad to provide FRA with periodic frequent progress reports.

Paragraph (e) proposes time limits for reporting failures and malfunctions and the minimum reporting requirements. FRA has no specific format for the reports, and will accept any format provided it contains at least the information required by this proposed rule. FRA will accept delivery of these reports by commercial courier, fax, and e-mail.

Paragraph (f) proposes to require the manufacturer to provide a detailed explanation of the problem and the intended or performed corrective action to FRA upon request, in the event that a PTC system is found to be unsafe due to a design or manufacturing defect. While the railroad may be able to report symptoms of a problem, it is the manufacturer who is in the best position to determine its underlying root cause. FRA may require this information to determine the full impact of the problem, and to determine if any additional restrictions or limitations on the use of the PTC may be warranted to ensure the safety of the general public and the railroad personnel.

Proposed paragraph (g) is intended to limit unnecessary reporting. If the failure was the result of improper operation of the PTC system outside of the design parameters or of non-compliance with the applicable operating instructions, FRA believes that compliance with paragraph (f) is not necessary. Instead, FRA expects, and proposes to require, the railroad to engage in more narrow remedial measures, including remedial training by the railroad in the proper operation of the PTC system. Similarly, once a problem has been identified to all stakeholders, FRA does not believe it is necessary for a manufacturer to repeatedly submit a formal report in accordance with paragraph (f). In either situation, however, FRA expects that all users of the equipment are proactively and timely notified of the misuse that occurred and the corrective actions taken.

Such reports, however, do not have to be made within seven days of occurrence, as required for other notifications under paragraph (e), but within a reasonable time appropriate to the nature and extent of the problem.

Proposed paragraph (h) is intended to make clear that the reporting requirements of part 233 are not a substitute for the proposed reporting requirements of this subpart. Both requirements apply. In the case of a false proceed signal indication, FRA would not expect the railroad to wait for the frequency of such occurrences to exceed the threshold reporting level assigned in the hazard log of the PTCSP. Rather, current § 233.7 requires all such instances to be reported.

Section 236.1027 Exclusions

This section retains similarities to, but also establishes contrasts with, § 236.911, which deals with exclusions from subpart H. In particular, § 236.911(c) offers reassurance that a stand-alone computer aided dispatching (CAD) system would not be considered a safety-critical processor-based system within the purview of subpart H. CADs have long been used by large and small railroads to assist dispatchers in managing their workload, tracking information required to be kept by regulation, and—most importantly—providing a conflict checking function designed to alert dispatchers to incipient errors before authorities are delivered. Even § 236.911, however, states that ''a subsystem or component of an office system must comply with the requirements of this subpart if it performs safety-critical functions

within, or affects the safety performance of, a new or next-generation train control system.'' In fact, FRA is currently working with a vendor on a simple CAD that provides authorities in an automated fashion, without the direct involvement of a dispatcher.

For subpart I, FRA wishes to retain the exception referred to in § 236.911 for CAD systems not associated with a PTC system. Many smaller railroads use CAD systems to good effect, and there is no reason to impose additional regulations where dispatchers contemporaneously retain the function of issuing mandatory directives. However, in the present context, it is necessary to recognize that PTC systems utilize CAD systems as the ''front end'' of the logic chain that defines authorities enforced by the PTC system, particularly in non-signaled territory.

Accordingly, paragraph (a) proposes the potential exclusion of certain office systems technologies from subpart I compliance. These existing systems have been implemented voluntarily to enhance productivity and have proven to provide a reasonably high level of safety, reliability, and functionality. FRA recognizes that full application of subpart I to these systems would present the rail industry with a tremendous burden. The burdens of subpart I may discourage voluntary PTC implementation and operation by the smaller railroads.

However, FRA proposes to apply subpart I to those subsystems or components that perform safety critical functions or affect the safety performance of the associated PTC system. The level and extent of safety analysis and review of the office systems will vary depending upon the type of PTC system with which the office system interfaces. For example, to prevent the issuance of overlapping and inconsistent authorities, FRA expects that each PTC system demonstrate sufficient credible evidence that the requisite safety-critical, conflict resolution (although not necessarily vital) hardware and software functions of the system will work as intended. FRA also expects that the applicable PTCDP's and PTCSP's risk analysis will identify the associated hazards and describe how they have been mitigated. Particularly where mandatory directives and work authorities are evaluated for use in a PTC system use without separate oral transmission from the dispatcher to the train crew or employee in charge—with the opportunity for receiving personnel to evaluate and confirm the integrity of the directive or authority received and the potential for others overhearing the transmission to note conflicting actions by the dispatching center—FRA will insist on explanations sufficient to provide reasonable confidence that additional errors will not be introduced.

Paragraph (b) proposes requirements for modifications of excluded PTC systems. At some point when a change results in degradation of safety or in a material increase in safety-critical functionality, changes to excluded PTC systems or subsystems may be significant enough to require application of subpart I's safety assurance processes. FRA believes that all modifications caused by unforeseen implementation factors will not necessarily cause the product to become subject to subpart I. These types of implementation modifications will be minor in nature and be the result of site specific physical constraints. However, FRA expects that implementation modifications that will result in a degradation of safety or a material increase in safety-critical functionality, such as a change in executive software, will cause the PTC system or subsystem to be subject to subpart I and its requirements. FRA is concerned, however, that a series of incremental changes, while each individually not meeting the threshold for compliance with this subpart, may when aggregated result in a product which differs sufficiently so as to be considered a new product. Therefore, FRA reserves the right to require products that have been incrementally changed in this manner to comply with the requirements of this subpart. Prior to FRA making such a determination, the affected railroad will be allowed to present detailed technical evidence why such a determination should not be made. This provision mirrors paragraph (d) of existing § 236.911.

Proposed paragraph (c) addresses the integration of train control systems with other locomotive electronic control systems. The earliest train control systems were electro-mechanical systems that were independent of the discrete pneumatic and mechanical control systems used by the locomotive engineer for normal throttle and braking functions. Examples of these train control systems included cab signals and ACS/ATC appliances. These systems included a separate antenna for interfacing with the track circuit or inductive devices on the wayside. Their power supply and control logic were separate from other locomotive functions, and the cab signals were displayed from a separate special-purpose unit. Penalty brake applications by the train control system bypassed the locomotive pneumatic and mechanical control systems to directly operate a valve that accomplished a service reduction of brake pipe pressure and application of the brakes as well as reduction in locomotive tractive power. In keeping with this physical and functional separation, train control equipment on board a locomotive came under part 236, rather than the locomotive inspection requirements of part 229.

Advances in hardware and software technology have allowed the various PTC systems' and components' original equipment manufacturers (OEMs) to repackage individual components, eliminating parts and system function control points access. Access to control functions became increasingly restricted to the processor interfaces using proprietary software. While this resulted in significant simplification of the previously complex discrete pneumatic and mechanical control train and locomotive control systems into fewer, more compact and reliable devices, it also creates significant challenges with respect to compatibility of the application programs and configuration management.

FRA encourages such enhancements, and believes, if properly done, can result in significant safety, as well as operational, improvements. Locomotive manufacturers can certainly provide secure locomotive and train controls, and it is important that they do so if locomotives are to function safely in their normal service environment. FRA highly encourages the long-term goal of common platform integration. However, when such an integration occurs, it must not be done at the expense of decreasing the safe, and reliable operation of the train control system. Accordingly FRA expects that the complete integrated system will be shown to have been designed to fail-safe principles, and then demonstrated that the system operates in a fail safe mode. Any commingled system must have a manual failsafe fall back up that allows the engineer to be brought to a safe stop in the event of an electronic system failure. This analysis must be provided to FRA for approval in the PTCDP and PTCSP as appropriate. This provision mirrors the heightened scrutiny called for by § 236.913(c) of subpart H for commingled systems, but is more explicit with respect to FRA's expectations. The provision in general accords with the requirements for locomotive systems that are currently under development in the RSAC's Locomotive Safety Standards Working Group.

Finally proposed paragraph (d) clarifies the application of subparts A

through H to products excluded from compliance with Subpart I. These products are excluded from the requirements of subpart I, but FRA expects that the developing activity demonstrates compliance of products with Subparts A through H. FRA believes that railroads not mandated to implement PTC, or that are implementing other non-PTC related processor based products should be given the option to have those products approved under subpart H by submitting a PSP and otherwise complying with subpart H or voluntarily complying with subpart I. This provision mirrors § 236.911(e) of subpart H.

Section 236.1029 PTC System Use and En Route Failures

This section proposes minimum requirements, in addition to those found in the PTC system's plans, for each PTC system with a PTC System Certification. Railroads are allowed, and encouraged, to adopt more restrictive rules that increase safety.

Paragraph (a) proposes to require that, in the event of the failure of a component essential to the safety of a PTC system to perform as intended, the cause be identified and corrective action taken without undue delay. The paragraph also requires that until the corrective action is completed, the railroad is required at a minimum, to take the appropriate measures, including those specified in the PTCSP, to assure the safety of train movements, roadway workers, and on-track equipment. This proposed requirement mirrors current requirements of § 236.11, which applies to all signal and train control system components. Under proposed paragraph (a), FRA intends to apply to PTC systems provided PTC System Certification under subpart I the same standard in current § 236.11.

Paragraph (b) proposes the circumstance where a PTC onboard apparatus on a lead locomotive that is operating in or is to be operated within a PTC system fails or is otherwise cut-out while en route. Under proposed paragraph (b), the subject train may only continue such operations in accordance with specific limitations. An en route failure is applicable only in instances after the subject train has departed its initial terminal, having had a successful initialization, and subsequently rendering it no longer responsive to the PTC system. For example, FRA believes that an en route failure may occur when the PTC onboard apparatus incurs an onboard fault or is otherwise cut out.

Under subpart H, existing § 236.567 provides specific limitations on each train failing en route in relation to its applicable automatic cab signal, train stop, and train control system. FRA believes that it would be desirable to impose somewhat more restrictive conditions given the statutory mandate and the desire to have an appropriate incentive to properly maintain the equipment and to timely respond to en route failures. For instance, FRA recognizes that the limitations of § 236.567 do not account for the statutory mandates of the core PTC safety functions. However, during the PTC Working Group meetings, no consensus was reached on how to regulate en route failures on PTC territory. Nevertheless, proposed § 236.1029, and in particular proposed paragraph (b), purposefully intend to parallel the limitations contained in § 236.567. In other words, FRA intends that § 236.567 and proposed paragraph (b) to § 236.1029 will share the common purpose of maintaining a level of safety generally in accord with that expected with the train control system fully functional. This is accomplished by requiring supplementary procedures to heighten awareness and provide operational control (limiting the frequency of unsafe events) and by restricting the speed of the failed train (reducing the potential severity of any unsafe event).

Paragraph (b)(1) proposes to allow the subject train to proceed at restricted speed—or at medium speed if a block signal system is in operation according to signal indication—to the next available point where communication of a report can be made to a designated railroad officer of the host railroad. The intent of this requirement is to ensure that the occurrence of an en route failure may be appropriately recorded and that the necessary alternative protection of absolute block is established.

After a report is made in accordance with paragraph (b)(1), or made electronically and immediately by the PTC system itself, paragraph (b)(2) proposes to allow the train to continue to a point where an absolute block can be established in advance of the train in accordance with the limitations that follow in paragraphs (b)(2)(i) and (ii). Paragraph (b)(2)(i) proposes to require that where no block signal system is in use, the train may proceed at restricted speed. Alternatively, under proposed paragraph (b)(2)(ii), the train may proceed at a speed not to exceed medium speed where a block signal system is in operation according to signal indication.

Paragraph (b)(3) proposes to require that, upon the subject train reaching the location where an absolute block has been established in advance of the train, the train may proceed in accordance with the limitations that follow in paragraphs (b)(3)(i), (ii), or (iii). Proposed paragraph (b)(3)(i) requires that where no block signal system is in use, the train may proceed at medium speed; however, if the involved train is a train which is that of the criteria requiring the PTC system installation (*i.e.,* a passenger train or a train hauling any amount of PIH material), it may only proceed at a speed not to exceed 30 miles per hour. Paragraph (b)(3)(ii) requires that where a block signal system is in use, a passenger train may proceed at a speed not to exceed 59 miles per hour and a freight train may proceed at a speed not to exceed 49 miles per hour. Paragraph (b)(3)(iii) requires that except as provided in paragraph (c), where a cab signal system with an automatic train control system is in operation, the train may proceed at a speed not to exceed 79 miles per hour.

Paragraph (c) requires that, in order for a PTC train that operates at a speed above 90 miles per hour to deviate from the operating limitations contained in paragraph (b) of this section, the deviation must be described and justified in the FRA approved PTCDP or PTCSP, or the Order of Particular Applicability, as applicable.

Paragraph (d) proposes to require that the railroad operate its PTC system within the design and operational parameters specified in the PTCDP and PTCSP. Railroads will not exceed maximum volumes, speeds, or any other parameter provided for in the PTCDP or PTCSP. On the other hand, a PTCDP or PTCSP could be based upon speed or volume parameters that are broader than the intended initial application, so long as the full range of sensitivity analyses is included in the supporting risk assessment. FRA feels this requirement will help ensure that comprehensive product risk assessments are performed before products are implemented.

Paragraph (e) sets forth the requirement that any testing of the PTC system must not interfere with its normal safety-critical functioning, unless an exception is obtained pursuant to 49 CFR 236.1035, where special conditions have been established to protect the safety of the public and the train crew. Otherwise, paragraph (e) requires that each railroad ensure that the integrity of the PTC system not be compromised, by prohibiting the normal functioning of such system to be interfered with by testing or otherwise without first taking measures to provide for the safety of train movements, roadway workers, and

on-track equipment that depend on the normal safety-critical functioning of the system. This provision parallels current § 236.4, which applies to all systems. By requiring this paragraph, FRA also intends to clarify that the standard in current § 236.4 also applies to subpart I PTC systems.

Paragraph (f) proposes to require that each member of the operating crew has appropriate access to the information and functions necessary to perform his or her job safely when products are implemented and used in revenue service. Where two-person crews are employed, availability of a screen and any needed function keys will enable the second crew person to carry out PTC onboard computer-related activities without distracting the locomotive engineer from maintaining situational awareness of activities outside the locomotive cab. FRA's existing regulations for train control in § 236.515 requires that the cab signal display be clearly visible to each member of the crew. FRA believes the decision to operate with one PTC screen, only accessible to the engineer, can only be made after careful analysis of the human factor implications, the associated risks, and the sensitivity of the safety analysis that is used to potentially justify the decision. FRA notes that the principles of crew resource management and current crew briefing practices in the railroad industry require that all members of a functioning team (*e.g.,* engineer, conductor, dispatcher, roadway worker in charge) have all relevant information available to facilitate constructive interactions and permit incipient errors to be caught and corrected. Retaining and reinforcing this level of cooperation will be particularly crucial during the early PTC implementation as errors in train consist information, errors generated in on-board processing, delays in delivery of safety warnings due to radio frequency congestion, and occasional errors in dispatching challenge the integrity of PTC systems even as the normal reliability of day-to-day functioning supports reductions in vigilance. Loss of crew cooperation could easily spill over to other functions, including switching operations and management of emergency situations.

This issue was the subject of significant disagreement within the PTC Working Group. FRA appreciates the views of those who suggest that the cost of additional displays is not warranted and the argument that, where there is an additional crew member assigned, no value may be added by isolating the second crew member from potentially corrupted information communicated from the PTC display. However, FRA believes that there is a strong likelihood that railroads will at some point in the future seek to deliver electronically all mandatory directives from the dispatcher to the PTC onboard apparatus, obviating the need for oral transmission. When this occurs, FRA believes that having a second crew member involved in receipt and confirmation of the authority will be useful to verify situational appropriateness and avoid information overload of the locomotive engineer.

Section 236.1031 Previously Approved PTC Systems

FRA recognizes that substantial effort has been voluntarily undertaken by the railroads to develop, test, and deploy PTC systems prior to the passage of the RSIA08, and that some of the PTC systems have accumulated a significant history of safe and reliable operations. In order to facilitate the ability of the railroads to leverage the results of PTC design, development, and implementation efforts that have been previously been approved or recognized by FRA prior to the adoption of this subpart, FRA is proposing an expedited certification process in this section.

Under proposed paragraph (a), each railroad that has a PTC system that may qualify for expedited treatment would have to submit a Request for Expedited Certification (REC) letter. Products that have not received approval under the subpart H, or that have not been previously recognized by FRA, would be ineligible. The REC letter may be jointly submitted by PTC railroads and suppliers as long as there is at least one PTC railroad. A PTC system may qualify for expedited certification if it fulfills at least one of the descriptions proposed in paragraphs (a)(1) through (a)(3). While these descriptions are objective in nature, FRA intends them to cover ETMS, ITCS, and ACSES, respectively.

Proposed paragraph (a)(1) applies to systems that have been recognized or approved by FRA after submission of a product safety plan (PSP) in accordance with subpart H. Subpart I generally reflects the same criteria required for a PSP under subpart H. Thus, FRA believes that most of the PTCDP and PTCSP requirements in subpart I can be fulfilled with the submission of the existing and approved PSP. However, FRA notes that the subject railroad will also need to submit the information required in a PTCDP and PTCSP that is not in the current PSP.

FRA also recognizes that certain PTC systems may currently operate in revenue service with FRA approval through the issuance of a waiver or order. Proposed paragraphs (a)(2) and (a)(3) intend to cover those systems.

If a PTC system complying with paragraph (a)(1) is provided expedited certification, the system plans should ultimately match the criteria required for each PTCDP and PTCSP. As previously noted, a railroad may seek to use a PTC system that has already received a Type Approval. To extend this benefit as it applies to previously used systems for which expedited certification is provided, paragraph (b) proposes to give the Associate Administrator the ability to provide a Type Approval to systems receiving expedited certification in accordance with paragraph (a)(1).

FRA recognizes that certain systems eligible for expedited certification may not entirely comply with the subsequently issued statutory mandate. Accordingly, under paragraph (c), FRA is compelled to propose that before any Type Approval or expedited certification may be provided, the PTC system must be shown to reliably execute the same functionalities of every other PTC system required by subpart I. Nothing in this abbreviated process should be construed as implying the automatic granting by FRA of a Type Approval or PTC System Certification. Each expedited request for a Type Approval or PTC System Certification must be submitted by the railroad under this abbreviated process and, as required under subpart I, must demonstrate that the system reliably enforces positive train separation and prevents overspeed derailments, incursions into roadway worker zones, and movements through misaligned switches.

Under proposed paragraph (d), FRA encourages railroads, to the maximum extent possible, to use proven service history data to support their requests for Type Approval and PTC System Certification. While proven service history cannot be considered a complete replacement for an engineering analysis of the risks and mitigations associated with a PTC product, it provides great creditability for the accuracy of the engineering analysis. Testing and operation can only show the absence or mitigation of a particular failure mode, and FRA believes that there will always be some failure modes that may only be determined through analysis. Due to this inherent limitation associated with testing and operation, FRA also strongly encourages the railroads to also submit any available analysis or information.

Paragraph (e) proposes that, to the extent that the PTC system proposed for implementation under this subpart is different in significant detail from the

system previously approved or recognized, the changes shall be fully analyzed in the PTCDP or PTCSP as would be the case absent prior approval or recognition. FRA understands that the PTC product for which expedited Type Approval and PTC System Certification is sought may differ in terms of functionality or implementation from the PTC product previously approved or recognized by FRA. In such a case, the service history and analysis may not align directly with the new variant of the product. Similarly, the available service history and analysis associated with a PTC product may be inconclusive about the reliability of a particular function. It is because of these possible situations that FRA can not unequivocally promise that all requests for expedited Type Approval and PTC System Certification submitted by a railroad under this subpart will be automatically granted. FRA will, however, apply the available service history and analytical data as credible evidence to the maximum extent possible. FRA believes that this still greatly simplifies each railroad's task in making its safety case, since the additional testing and analysis required need only address those areas for which credible evidence is insufficient. To reduce the overall level of financial resources and effort necessary to obtain sufficient credible evidence to support the claims being made for the safety performance of the product, FRA also encourages each railroad to share with other railroads a system's service history and the results of any analysis, even in the case where the shared information does not fully support a particular railroad's safety analysis.

Proposed paragraph (f) defines terms used only in this section. ''Approved'' refers to approval of a Product Safety Plan under subpart H. As this NPRM was being prepared, only BNSF Railway's ETMS Configuration I had been so approved, but other systems were under development. ''Recognized'' refers to official action permitting a system to be implemented for control of train operations under an order or waiver, after review of safety case documentation for the implementation. As this NPRM was being prepared, only ACSES I had been recognized under an order of particular applicability, and ACSES II was under review for potential approval. Only one system, the ITCS in place on Amtrak's Michigan line, had been approved for unrestricted revenue service under waiver.

FRA was unable to fashion an outright ''grandfathering'' of equipment previously used in transit and foreign service. FRA does not have the same degree of direct access to the service history of these systems. Transit systems—except those that are connected to the general railroad system—are not directly regulated by FRA. FRA has had limited positive experience eliciting safety documentation from foreign authorities, particularly given the influence of national industrial policies.

However, FRA believes that, while complete exclusion may not be available in those circumstances, procedural simplification may be possible. FRA is considering a procedure under which the railroad and supplier could establish safety performance at the highest level of analysis for the particular product, relying in part on experience in the other service environments and showing why similar performance should be expected in the U.S. environment. Foreign signal suppliers should be in a good position to marshal service histories for these products and present them as part of the railroad's PTCSP. For any change, the applicant must provide additional information that will enable FRA to make an informed decision regarding the potential impact of the change on safety. This information must include, but is not limited to, the following: (1) A detailed description of the change; (2) a detailed description of the hardware and software impacted by the change; (3) a detailed description of any new functional data flows resulting from the change; (4) the results of the analysis used to verify that the change did not introduce any new safety risks or, if the change did introduce any new safety risks, a detailed description of the new safety risks and the associated risk mitigation actions taken; (5) the results of the tests used to verify and validate the correct functionality of the product after the change has been made; (6) a detailed description of any required modifications in the railroad training plan that are necessary for continued safe operation of the product after the change; and (7) a detailed description of any new test equipment and maintenance procedures required for the continued safe operation of the product. FRA requests comment on whether and in what way these concepts might be captured in the final rule.

In the same vein, paragraph (g) encourages re-use of safety case documentation previously reviewed, whether under subpart H or subpart I.

Section 236.1033 Communications and Security Requirements

Subpart I proposes specific communications security requirements for PTC system messages. Proposed § 236.1033 originated from the radio and communications task force within the PTC Working Group. The objectives of the proposal are to ensure data integrity and authentication for communications with and within a PTC system.

In data communications, ''cleartext'' is a message or data in a form that is immediately comprehensible to a human being without additional processing. In particular, it implies that this message is transferred or stored without cryptographic protection. It is related to, but not entirely equivalent to, the term ''plaintext.'' Formally, plaintext is information that is fed as an input to a cryptographic process, while ''ciphertext'' is what comes out of that process. Plaintext might be compressed, encrypted, or otherwise manipulated before the cryptographic process is applied, so it is quite common to find plaintext that is not cleartext. Cleartext material is sometimes in plain text form, meaning a sequence of characters without formatting, but this is not strictly required. The security requirements proposed in this document are consistent with the Department of Homeland Security (DHS) guidance for SCADA systems and the National Institute of Standards and Technology guidance. FRA has coordinated this proposal with DHS.

Proposed paragraph (a) establishes the requirement for message integrity and authentication. Integrity is the assurance that data is consistent and correct. Generally speaking, in cryptography and information security, integrity refers to the validity of data. Integrity can be compromised through malicious altering—such as an attacker altering an account number in a bank transaction, or forgery of an identity document—or accidental altering—such as a transmission error, or a hard disk crash. A level of data integrity can be achieved by mechanisms such as parity bits and Cyclic Redundancy Codes (CRCs). Such techniques, however, are designed only to detect some proportion of accidental bit errors; they are powerless to thwart deliberate data manipulation by a determined adversary whose goal is to modify the content of the data for his or her own gain. To protect data against this sort of attack, cryptographic techniques are required. Thus, appropriate algorithms and keys must be employed and commonly understood between the entity wanting to provide data integrity and the entity wanting to be assured of data integrity.

Authentication is the act of establishing or confirming something (or someone) as authentic. Various systems have been invented to provide a means

for readers to reliably authenticate the sender. In any event, the communication must be properly protected; otherwise, an eavesdropper can simply copy the relevant data and later replay it, thereby successfully masquerading as the original, legitimate entity.

Sender authentication typically finds application in two primary contexts. Entity identification serves simply to identify the specific entity involved, essentially in isolation from any other activity that the entity might want to perform. The second context is data origin identification, which identifies a specific entity as the source or origin of a given piece of data. This is not entity identification in isolation, nor is it entity identification for the explicit purpose of enabling some other activity. Rather, this is identification with the intent of statically and irrevocably binding the identified entity to some particular data, regardless of any subsequent activities in which the entity might engage. Cryptographically based signatures provide nearly irrefutable evidence that can be used subsequently to prove to a third party that this entity did originate—or at least possess—the data.

Proposed paragraph (b)(1) requires that cryptographic algorithms and keys used to establish integrity and authenticity be approved by either the National Institute of Standards or a similar standards organization acceptable to FRA. As a practical matter, cryptographic algorithms can be believed secure by competent, experienced, practicing cryptographers. This requires that the algorithms be publicly known and have been seriously studied by working cryptographers. Algorithms that have been approved by NIST (or similar standards bodies) can be assured of being both publicly known and seriously studied.

Proposed paragraph (b)(2) allows the use of either manual or automated means to distribute keys. Key distribution is the most important component in secure transmissions. The general key distribution problem refers to the task of distributing keys between communicating parties to provide the required security properties. Frequent key changes are usually desirable to limit the amount of data compromised if an attacker learns the key. Therefore, the strength of any cryptographic system results with the key distribution technique, a term that refers to the means of delivering a key to two parties that wish to exchange data without allowing others to see the key. Key distribution can be achieved in a number of ways. There are various combinations by which a key can be selected manually or in automation amongst one or multiple parties.

Proposed paragraph (b)(3) establishes the conditions under which cryptographic keys must be revoked. Paragraph (b)(3)(i) addresses the situation when a key has actually been found to have been compromised and when the possibility of key compromise exists. Cryptographic algorithms are part of the foundations of the security house, and any house with weak foundations will collapse. Adequate procedures should be foreseen to take an algorithm out of service or to upgrade an algorithm which has been used beyond its lifetime

Proposed paragraph (d) addresses physical protection as applied to cryptographic equipment. Compliance does not necessitate locking devices within mechanical safes or enclosing their electronics within thick steel or concrete shields (*i.e.* making them tamper-proof). Compliance does, however, involve using sound design practices to construct a system capable of attack detection by a comprehensive range of sensors (*i.e.* tamper resistant). The level of physical security suggested should be such that unauthorized attempts at access or use will either be unsuccessful or will have a high probability of being detected during or after the event. Additionally, the cryptographic equipment should be prominently situated in operation so that its condition (outward appearance, indicators, controls, *etc.*) is easily visible to minimize the possibility of undetected penetration. In any system containing detection and destruction methods as described here, there is naturally a cost penalty for providing very high levels of tamper resistance, due to construction and test requirements by the manufacturer. It is naturally important to analyze the risks of key disclosure against cost of protection and specify a suitable implementation.

Confidentiality has been defined by the International Organization for Standardization (ISO) as ''ensuring that information is accessible only to those authorized to have access.'' Confidentiality, integrity, and authentication all rely on the same basic cryptographic primitives—algorithms with basic cryptographic properties—and their relationship to other cryptographic problems. These primitives provide fundamental properties, which guarantee one or more of the high-level security properties. In proposed paragraph (e)(1), FRA makes it clear that while providing for confidentiality of message data is not a regulatory requirement, if confidentiality is elected to be implemented by a railroad, that the same protection mechanisms applicable to the cryptographic primitives that support integrity and authentication must also be provided for the cryptographic primitives that support confidentiality.

It is only the difficulty of obtaining the key that determines security of the system, provided that there is no analytic attack (*i.e.,* a ''structural weakness'' in the algorithms or protocols used), and assuming that the key is not otherwise available (such as via theft, extortion, or compromise of computer systems). A key should therefore be large enough that a brute force attack (possible against any encryption algorithm) is infeasible, whereas the attack would take too long to execute. Under information theory, to achieve perfect secrecy, it is necessary for the key length to be at least as large as the message to be transmitted and only used once (this algorithm is called the one-time pad). In light of this, and the practical difficulty of managing such long keys, modern cryptographic practice has discarded the notion of perfect secrecy as a requirement for encryption, and instead focuses on computational security. Under this definition, the computational requirements of breaking an encrypted text must be infeasible for an attacker. Paragraph (e)(2) proposes to require that in the event that a railroad elects to implement confidentiality, the chosen key length should provide the appropriate level of computational complexity to protect the information being protected, and that this information be included in the PTCSP. Both academic and private organizations provide recommendations and mathematical formulas to approximate the minimum key size requirement for security based on mathematic attacks; they generally do not take algorithmic attacks, hardware flaws, or other such issues into account.

Key management—the process of handling and controlling cryptographic keys and associated material during their life cycle in a cryptographic system—includes ordering, generating, distributing, storing, loading, escrowing, archiving, auditing, and destroying the different types of material. Paragraph (e) proposes to require that cleartext stored cryptographic keys be protected from unauthorized disclosure, modification, or substitution. During key management, however, it may be necessary to validate the accuracy of the key being entered, especially in cases where the key management process is being done manually. During the key

entry process, keys not encrypted to protect against disclosures may be temporarily displayed to allow visual verification. However, if the key has been encrypted to protect against disclosure, then the cleartext version of the key may not be displayed. This does not, however, preclude the display of the encrypted version of the key.

In proposed paragraph (f), FRA requires that each railroad implement a service restoration and mitigation plan to address restoral of communications services in the event of their loss or disruption and to make this plan available to FRA. Loss of communications services reduces or eliminates the effectiveness of a PTC system and FRA requires that these critical safety systems, once implemented, are restored to operation as soon as practical. FRA believes that the restoration plan must include testing and validating the plan, communicating the plan, and validating backup and restoration operations.

To ensure that these or any other procedures work in the railroads operational environment, the railroad must validate each procedure intended for implementation. The backup and restoration plan should clearly describe who is to implement procedures and how they are to do it. The primary information to be communicated includes: the team or person (specified as an individual or a role) that is responsible for determining when restoration of service is required and the procedures to be used to restore service, as well as the team or person responsible for implementing procedures for each restoration scenario; the criteria for determining which restoration procedures are most appropriate for a specific situation; the time estimates for restoration of service in each restoration scenario; the restoration procedures to be used, including the tools required to complete each procedure; and the information required to restore data and settings.

Finally, paragraph (g) is proposed to make clear that railroads are permitted to implement more restrictive security requirements provided the requirements do not adversely impact the interoperability.

Section 236.1035 Field Testing Requirements

Initial field or subsequent regression testing of a PTC product on the general rail system is often required before the product has been certified in order to obtain data to support the safety case presented in the PTCSP. To ensure the safety of the public and train crews, prior FRA approval is required to conduct test operations on the general rail system. This paragraph proposes an alternative to the waiver process when only part 236 regulations are involved. When regulations concerning track safety grade crossing safety or when operational rules are involved, however, this process would not be available. Such testing may also implicate other safety issues, including adequacy of warning at highway-rail crossings (including part 234 compliance), qualification of passenger equipment (part 238), sufficiency of the track structure to support higher speeds or unbalance (part 213), and a variety of other safety issues, not all of which can be anticipated in any special approval procedure. Approval under this part for testing does not grant relief from other parts of this title and the railroads must still apply for relief from the non-part 236 regulations under the discrete special approval sections of those regulations, the provisions of part 211 related to waivers, or both.

The information required for this filing is described in proposed paragraphs 236.1035(a)(1) through (a)(7). This information is necessary in order for FRA to make informed decisions regarding the safety of testing operations. FRA would prefer that the informational filings to test under this part be accompanied by any requests for relief from non-part 236 regulations so that they may be considered as a whole.

Proposed paragraph (b) provides notification that FRA may—based on the results of the review of the information provided in paragraph (a) and in order to provide additional oversight to ensure the safety of rail operations—impose special conditions on the execution of the testing, including the appointment of a FRA test monitor. When a test monitor is appointed, he or she has the authority to stop testing if unsafe conditions arise, require additional tests as necessary to demonstrate the safe operation of the system, or have tests rerun when the results are in question.

Paragraph (c) reemphasizes the earlier discussion that either temporary or permanent requests for relief for other than requirements of part 236 must be submitted in accordance with the waiver processes specified by part 211.

Sections 236.103 Through 236.1049

In subpart H, §§ 236.917 through 236.929 contain various requirements that involve PSPs. FRA believes that these requirements should apply equally to PTC systems governed by subpart I. FRA has included proposed §§ 236.1037 to 236.1049 to inform interested parties how these elements would apply. FRA intends that the meanings of those sections in subpart H, as described in the preamble to its proposed and final rules, would also apply equally in the context of this proposal. While FRA has considered amending these sections in subpart H to incorporate references to subpart I, FRA believes such an attempt and its results would be cumbersome and awkward. Thus, FRA has included the provisions in proposed subpart I for clarity. FRA seeks comments on this issue.

Appendix B to Part 236—Risk Assessment Criteria

FRA proposes modifying Appendix B of part 236 to enhance the language for risk assessment criteria in a light of experience gained during the initial stage of PTC system implementation under subpart H and to accommodate the requirements of subpart I regulating the use of mandatory PTC systems. As modified, Appendix B will modify certain headings and incorporate new language in paragraphs (a) through (h).

Paragraph (a) reflects the change in the required length of time over which the system's risk must be computed. FRA replaces the requirement to assess risk for the system ''over the life-cycle of 25 years or greater'' with the requirement to assess risk ''over the designed life-cycle of the product.'' FRA believes that the proposed language is consistent with the preamble discussion of the subpart H final rule inasmuch that they do not specify the length of a system's life cycle, thereby providing flexibility for new processor-based systems to have a life cycle other than 25 years.

FRA proposes to modify paragraph (b) only to clarify FRA's intent.

FRA proposes to modify the heading and content of paragraph (c) to better identify the main purpose of this requirement and to ensure its consistency with the associated requirements of §§ 236.909(c) and (d). FRA believes that current paragraph (c) and its heading do not fully support or clarify the main intent of subpart H, which requires that the total cost of hazardous events should be the risk measure for a full risk assessment and that the mean time to hazardous event (MTTHE) calculations for all hazardous events should be the risk measure for the abbreviated risk assessment. The existing subpart H text asks for both the base case and the proposed case to be expressed in the same metrics. Paragraph (c) of this appendix, as currently written, does not fully reflect FRA's intent that the same risk metric is to be used in the risk assessment for both the previous and current

conditions (*see* § 236.913(g)(2)(vii). FRA believes that the revised title of this paragraph poses the right question and that its new language provides better guidance on how to perform risk assessment for previous and current conditions.

FRA proposes to modify the heading and text of paragraph (d) to create a comprehensive and detailed list of system characteristics that must be included in the risk assessment for each proposed PTC system subject to requirements of subpart H or subpart I, or both, as applicable. FRA believes that the extended description of system characteristics better suits the risk assessment requirements of subpart H and subpart I. For example, the proposed revisions clarify that the risk assessment must account for the total volume of traffic, the type of transported freight materials (PIH, PIH), and any additional requirements for PTC systems with trains operating at certain speeds.

FRA proposes to modify paragraph (e) to clarify its intent and reflect the industry's experience in risk assessment techniques gained during the initial stage of PTC system implementation under subpart H. In the proposed language of paragraph (e), FRA provides more specific guidance on how to derive the main risk characteristics, MTTHE, and what role reliability and availability parameters, such as mean time to failure (MTTF) or mean time between failures (MTBF), for different system components can play while assessing risk for vital and non-vital hardware or software components of the system. FRA emphasizes that it is critical that each railroad and its vendors include the software failure rates into risk assessments for the system. FRA also finds it necessary to advise each railroad and its vendors to include reliability and availability characteristics, such as MTTF or MTBF, into its risk assessment to account for potential system exposure to hazards during system failures or malfunctioning when the system operates in its fall back mode—the back-up operation, as described in the PTCSP, when the PTC system fails to operate.

FRA believes that the proposed modifications to paragraph (e) more accurately address the industry's need for clarity in interpretation and execution of the requirements related to risk assessment.

FRA proposes to modify paragraph (f)(2) to reflect FRA's understanding that a software failure analysis may not necessarily be based on MTTHE ''Verification and Validation'' processes and that MTTHE characteristics cannot be easily obtained for the system software components. Therefore, the proposed modification intends to outline the significance of detailed software fault/failure analysis and software testing to demonstrate repeatable predictive results that all software defects are identified and corrected.

FRA proposes to modify paragraph (g) to clarify that MMTHE calculations should account for the restoration time after system or component failure and that the system design must be assessed for adequacy through the Verification and Validation process.

FRA proposes to modify paragraph (h) to emphasize the need to document all assumptions made during the risk assessment process. FRA believes that the assumptions should be documented while deriving the total cost of potential accident consequences for full risk assessment or MTTHE values for abbreviated risk assessment, rather than only documenting assumptions for her intermediate parameters, such as MTTF and MTTR, as currently required. These two referenced parameters may or may not be relevant for the risk assessment.

Appendix C to Part 236—Safety Assurance Criteria and Processes

FRA proposed to modify Appendix C to Part 236 to enhance and clarify its language, re-organize the existing list of safe system design principles in accordance with the well established models of system safety engineering, and augment the list of safe system design principles with the principles related to safe system software design. A safe state is a system configuration that the system defaults to in the event of a fault or failure or when unacceptable or dangerous conditions are detected. The safe state is a state of the process operation where the hazardous event cannot occur. Paragraph (a), as proposed, is revised to reflect the main purpose of this appendix in clear, accurate, and consistent language that will be repeatedly used throughout the appendix. It also outlines that the requirements of this appendix will be applicable to each railroad's PTCIP and PTCSP, as required by subpart I.

Paragraph (b), as proposed, is modified and restructured to consistently present a complete list of safety assurance principles properly classified or categorized in accordance with well established system safety engineering principles that need to be followed by the designer of the system to assure that all system components perform safely under normal operating conditions and under failures, accounting for human factor impacts, external influencing, and procedures and policies related to maintenance, repair, and modification of the system. FRA also proposes adding language indicating that these principles must also be applicable to PTC systems designed and implemented under the requirements of subpart I. FRA's intent in promulgating Appendix C was to ensure that safety principles are followed during the design stage and that Verification and Validation methods are used to assure that the product meets the safety criteria established in § 236.909. The heading of this paragraph and its subparagraphs are changed to more adequately and precisely capture this paragraph's purpose. For instance, FRA proposes to modify the heading of paragraph (b)(1) to better suit the chosen base of classification for all safety principles under paragraph (b).

Under paragraph (b)(3), FRA proposes to amend the definition of Closed Loop Principle to reflect its industry accepted definition provided by the AREMA Manual. FRA believes that the current definition is too general and does not reflect the essence of the most significant principles of safe signaling system design.

Under paragraph (b)(4), FRA proposes to add a list of Safety Assurance Concepts that the designer may consider for implementation to assure sail-safe system design and operation. These principles are predominantly applicable for the safe system software design and quoted from the IEEE–1483 standard. Based on this proposed amendment, FRA also proposes to renumber some of the remaining subparagraphs of paragraph (b) to follow the chosen scheme for the proper classification and sequence of safety principles.

FRA proposes to amend paragraph (c) reflect the changes in recommended standards. For instance, the standard ''EN50126: 1999, Railway Applications: Specification and Demonstration of Reliability, Availability, Maintainability and Safety'' (RAMS) is superseded by the standard IEC62278: 2002 under the same title. The standard ''EN50128 (May 2001), Railway Applications: Software for Railway Control and Protection Systems'' is superseded by the Standard IEC62279: 2002 under the same title.

Under paragraph (c)(3)(i), FRA references additional IEEE standards that have become available and will support the designs of PTC systems that are widely using communications as their main component. In addition to existing reference under paragraph (c)(3)(i)(A) for IEEE–1483 Standard, the following standards are added to paragraph (c)(3)(i): IEEE 1474.2–2003,

Standard for user interface requirements in communications based train control (CBTC) systems; and IEEE 1474.1–2004, Standard for Communications-Based Train Control (CBTC) Performance and Functional Requirements.

After an analysis of the current applicability of ATCS Specification 130 and 140, FRA believes that they are not being used. Thus, FRA proposes to remove these standards from the list of referenced standards. However, FRA also proposes to add the ATCS 200, Data Communication standard that remains relevant for communication segment of PTC system designs.

FRA also considers it necessary to reference several additional sections of the current AREMA 2009 Communications and Signal Manual of Recommended Practices. In addition to Section 17 of this manual referenced in a previous version of Appendix C, FRA proposes to add to the list of references Section 16 Vital Circuit and Software Design; Section 21 Data Transmission; and Section 23 Communication-Based Signaling.

VII. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). We have prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this proposed rule. FRA invites comments on this RIA.

The costs anticipated to accrue from adopting this proposed rule would include: (1) Costs associated with developing implementation plans and administrative functions related to the implementation and operation of PTC systems, including the information technology and communication systems that make up the central office; (2) hardware costs for onboard locomotive system components, including installation; (3) hardware costs for wayside system components, including installation; and (4) maintenance costs for all system components.

Two types of benefits are expected to result from the implementation of this proposed rule—benefits from railroad accident reduction and business benefits from efficiency gains. The first type would include safety benefits or savings expected to accrue from the reduction in the number and severity of casualties arising from train accidents that would occur on lines equipped with PTC systems. Casualty mitigation estimates are based on a value of statistical life of $6 million. In addition, benefits related to accident preventions would accrue from a decrease in damages to property such as: Locomotives, railroad cars, and track; environmental damage; track closures; road closures; and evacuations. Benefits more difficult to monetize—such as the avoidance of hazmat accident related costs incurred by Federal, State, and local governments and impacts to local businesses—will also result. FRA also expects that once PTC systems are refined, there would likely be substantial additional business benefits resulting from more efficient transportation service; however such benefits are not included because of significant uncertainties regarding whether and when individual elements will be achieved and given the complicating factor that some benefits might, absent deployment of PTC, be captured using alternative technologies at lower cost. FRA requests comments on whether this proposed regulation exercises the appropriate level of discretion and flexibility to comply with RSIA08 in the most cost effective and beneficial manner.

This document presents a 20-year analysis of the costs and benefits associated with FRA's proposed rule, using both 7 percent and 3 percent discount rates, and two types of sensitivity analyses. The first is associated with varying cost assumptions used for estimating PTC implementation costs. The second takes into account potential business benefits from realizing service efficiencies and related additional societal benefits from attainment of environmental goals and an overall reduction in transportation risk from modal diversion.

The 20-year total cost estimates are $10.00 billion (PV, 7%) and $13.85 billion (PV, 3%). Annualized costs are $0.95 billion (PV, 7%) and $0.93 billion (PV, 3%). Using high-cost assumptions, the 20-year total cost estimates would be $17.12 billion (PV, 7%) and $23.76 billion (PV, 3%). Using low-cost assumptions, the 20-year cost estimates would be $7.09 billion (PV, 7%) and $9.84 billion (PV, 3%). The later the expenditures are made, the lower the discounted cost impact, which in any event is a very small portion of the total PTC costs.

Twenty-year railroad safety (railroad accident reduction) benefit estimates associated with implementation of the proposed rule are $608 million (PV, 7%) and $931 million (PV, 3%). Annualized benefits are $57 million (PV, 7%), and $63 million (PV, 3%). Some forecasts predict significant growth of both passenger and freight transportation demands, and it is thus possible that greater activity on the system could present the potential for larger safety benefits than estimated in this analysis. The presence of a very large PTC-equipped freight locomotive fleet also supports the opportunity for introduction of new passenger services of higher quality at less cost to the sponsor of that service. Information is not presently available to quantify that benefit.

TOTAL 20—YEAR BENEFITS AND DISCOUNTED BENEFITS

[At 3% and 7%]

Discount rate	3.00%	7.00%
Costs:		
Central Office and Development	$283,025,904	$263,232,675
Wayside Equipment	3,109,098,494	2,586,453,456
On-Board Equipment	1,643,839,209	1,416,706,349
Maintenance	8,812,624,111	5,741,220,231
Total	13,848,587,717	10,007,612,712
Railroad Safety Benefits	931,253,681	607,711,640

The Port Authority Trans Hudson (PATH), a commuter railroad, is apparently considering the system used by the New York City Transit Authority on the Canarsie line. This system, which is known as Communication-Based

Train Control, is not similar in concept to any of the other PTC systems (including the CSX CBTC, with which its name might easily be confused), and would not be suitable, as FRA understands the system, except on a railroad with operating characteristics similar to a heavy rail mass transit system. FRA believes that, in absence of the statutory mandate or this rulemaking, PATH would have adopted PTC for business reasons.

Although costs associated with implementation of the proposed rule are significant and such costs would far exceed the benefits, FRA is constrained by the requirements of RSIA08, which do not provide latitude to for implementing PTC differently. Nevertheless, FRA has taken several steps to avoid triggering unnecessary costs in the proposed rule. For instance, FRA is not proposing to require use of separate monitoring of switch position in signal territory or that the system be designed to determine the position of the end of the train. FRA also minimized costs, such as by proposing a requirement to monitor derails protecting the mainline, but limiting it to derails connected to the signal system; and by proposing a requirement to monitor hazard detectors protecting the mainline, but limiting it to hazard detectors connected to the signal system. FRA also minimized costs related to diamond crossings, where a PTC equipped railroad crosses a non-PTC equipped railroad at grade; included exceptions to main track for passenger train operations, and proposed provisions that would permit some Class III railroad operation of trains not equipped with PTC over Class I railroad freight lines equipped with PTC.

RSIA08 requires the railroads to have all mandatory PTC systems operational on or before December 31, 2015. Members of the PTC Working Group, especially railroad and supplier representatives, said that the timeframe was very tight, and that the scheduled implementation dates would be difficult to meet. In general, the faster a government agency requires a regulated entity to adopt new equipment of procedures, the more expensive compliance becomes. In part, this is due to supply elasticity being less over shorter time periods.

FRA is unable to estimate the potential savings if Congress provided a longer implementation schedule or provided incentives, rather than mandates, for PTC system installation. In order to estimate the likely reduction in costs in such situations, FRA would need to develop some other schedule for implementation. The element least sensitive to an implementation's schedule appears to be onboard costs. Each PTC system's onboard equipment seems similar and is not very different from existing onboard systems. Further, the 2015 deadline is not so restrictive that it would cause railroads to pull locomotives out of service just to install on board PTC equipment. Locomotives must be inspected thoroughly every 90 and more extensively every 360 days. The inspections can last from one to several days. Railroads usually bring locomotives into their shops to perform these inspections, during which time a skilled and experienced team could install the on board equipment for PTC. System development is much less certain, and more time would enable vendors to develop, test, and implement the software at a more reasonable cost. Wayside costs are also sensitive to the installation timetable, as the wayside must be mapped and measured, and then the railroads must install wayside interface units (WIUs). Wayside mapping and measurement takes a highly skilled workforce. A larger workforce is necessary to timely implement the required PTC systems in a shorter amount of time. WIU installation is likely similar to existing signal or communication systems installation, and is likely to involve use of existing railroad skilled workers. The shorter the installation time period, the more work will be done at overtime rates, which are, of course, higher.

FRA believes that lower costs could result from a longer installation period, but FRA also believes that the differences in costs would be within the range of the low costs provided in the main analysis of the proposed rule. The 2004 report included some lower cost estimates, but in light of current discussions with railroads, the cost estimates in the 1998 report seem more accurate. The lower estimates FRA received in preparing the 2004 report were both overly optimistic, and excluded installation costs, as well as higher costs which stem from meeting the performance standards.

Some of the costs of PTC implementation, operation, and maintenance may be offset by business benefits, especially in the long run, although there is uncertainty regarding the timing and level of those benefits. Economic and technical feasibility of the necessary system refinements and modifications to yield the potential business benefits has not yet been demonstrated. FRA analyzed business benefits associated with PTC system implementation and presented its findings in the 2004 Report. Due to the aggressive implementation schedule for PTC and the resulting need to issue a rule promptly, FRA has not formally updated this study. Nevertheless, FRA believes that there is opportunity for significant business benefits to accrue several years after implementation once the systems have been refined to the degree necessary. Thus, FRA conducted a sensitivity analysis of potential business benefits based on the 2004 Report.

The 2004 Report included business benefits from improved or enhanced locomotive diagnostics, fuel savings attributable to train pacing, precision dispatch, and capacity enhancement. Although railroads are enhancing locomotive diagnostics using other technologies, FRA believes that PTC could provide the basis for significant gains in the other three areas.

In the years since the 2004 Report, developing technology and rising fuel costs have caused the rail supply industry and the railroads to focus on additional means of conserving diesel fuel while minimizing in-train forces that can lead to derailments and delays from train separations (usually broken coupler knuckles). Software programs exist that can translate information concerning throttle position and brake use, together with consist information and route characteristics, to produce advice for prospective manipulation of the locomotive controls to limit in-train forces. Programs are also being conceived that project arrival at meet points and other locations on the railroad. These types of tools can be consolidated into programs that either coaches the locomotive engineer regarding how to handle the train or even take over the controls of the locomotive under the engineer's supervision. The ultimate purpose of integrating this technology is to conserve fuel use while handling the train properly and arriving at a designated location ''just in time'' (*e.g.,* to meet or pass a train or enter a terminal area in sequence ahead of or behind other traffic). Further integrating this technology with PTC communications platforms and traffic planning capabilities could permit transmittal of ''train pacing'' information to the locomotive cab in order to conserve fuel. Like the communications backbone, survey data concerning route characteristics can be shared by both systems. The cost of diesel fuel for road operations to the Class I railroads is approximately $3.5 billion annually and is gradually rising. If PTC technology helps to spur the growth and effective use of train pacing, fuel savings of 5% ($175,000,000

annually) or greater could very likely be achieved. Clearly, if the railroads are able to conserve use of fuel, they will also reduce emissions and contribute to attainment of environmental goals, even before modal diversion occurs.

The improvements in dispatch and capacity have further implications. With those improvements, railroads could improve the reliability of shipment arrival time and, thus, dramatically increase the value of rail transportation to shippers, who in turn would divert certain shipments from highway to rail. Such diversion would yield greater overall transportation safety benefits since railroads have much lower accident risk than highways, on a point-to-point ton-mile basis. The total societal benefits of PTC system implementation and operation, following the analysis, would be much greater than total societal costs, although the costs would fall disproportionately more heavily on the railroads.

At present, the PTC systems contemplated by the railroads, with the possible exception of PATH, would not increase capacity, at least not for some time. If the locomotive braking algorithms need to be made more conservative in order to ensure that each train does not exceed the limits of its authority, PTC system operation may actually decrease rail capacity where applied in the early years. Further investment would be required to bring about the synergy that would result in capacity gains. A more significant business benefit of PTC system operation would be derived from precision dispatching, which decreases the variance of arrival times of delivered freight. To avoid the risk of running out of stock, shippers often overstock their inventory at an annual cost of approximately 25% of its inventory value, regardless of the material being stored. This estimate accounts for shrinkage, borrowing costs, and storage costs. Of course, freight with more value per unit of mass or volume tends to have greater storage costs per unit. At present, no rail precision dispatch system exists. However, if a shipper would take advantage of precision dispatching, thus increasing freight arrival time accuracy, then it could reduce its overstock inventory. Accurate train data is a necessary, but not a sufficient condition, for precision dispatch. At least two of the Class I railroads have unsuccessfully attempted to develop precision dispatch systems. The mandatory installation of PTC systems is likely to divert any resources that might have been devoted to precision dispatch, so these benefits are unlikely during the first several years of this rule.

Applying current factors to the variables used in the 2004 Report to Congress, the resulting analysis indicates that diversion could result in highway annual safety benefits of $744 million by 2022, and $1,148 million by 2032. Of course, these benefits require that the productivity enhancing systems be added to PTC, and are heavily dependent on the underlying assumptions of the 2004 model.

Modal diversion would also yield environmental benefits. The 2004 Report estimated that reduced air pollution costs would have been between $68 million and $132 million in 2010 (assuming PTC would be implemented by 2010), and between $103 million and $198 million in 2020. This benefit would have accrued to the general public. FRA has not broken out the pollution cost benefit of the current rule, but offers the estimates from the 2004 Report as a guide to the order of magnitude of such benefits.

While railroads argued that many of the benefits identified in FRA's 2004 report were exaggerated, shortly after the publication of the report, several railroads began developing strategies for PTC system development and implementation. This investment by the railroads would seem to illustrate that they believe that there is some potential for PTC to provide a boost to railroad profits, beyond providing any of the aforementioned societal benefits.

Modal diversion is highly sensitive to service quality. Problems with terminal congestion and lengthy dwell times might overwhelm the benefits of PTC or other initiatives which the railroads have been pursuing (reconfiguration of yards, pre-blocking of trains, shared power arrangements, car scheduling, Automatic Equipment Identification, *etc.*) might actually work in synergy with PTC. It should also be noted that, in the years since the 2004 Report was developed, the Class I railroads have shown an increased ability to retain operating revenue as profit, rather than surrendering it in the form of reduced rates. This was particularly true during the period prior to the current recession, when strained highway capacity favored the growth of rail traffic. The sensitivity analysis performed by FRA indicates that realization of business benefits could yield benefits sufficient to close the gap between PTC implementation costs and rail accident reduction benefits within the first 20 years of the rule, applying a 3% discount rate, and by year 25 of the rule, applying a discount rate of 7%. Accordingly, the precise partition of business and societal benefits cannot be estimated with any certainty.

FRA recognizes that the likelihood of business benefits is uncertain and that the cost-to-benefit comparison of this rule, excluding any business benefits, is not favorable. However, FRA has taken measures to minimize the rule's adverse impacts and to provide as much flexibility as FRA is authorized to grant under RSIA08.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, we are publishing this IRFA to aid the public in commenting on the potential small business impacts of the proposals in this NPRM. We invite all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. We will consider all comments received in the public comment process when making a determination in the Final Regulatory Flexibility Assessment.

In accordance with the Regulatory Flexibility Act, an IRFA must contain:

(1) A description of the reasons why action by the agency is being considered;

(2) A succinct statement of the objectives of, and the legal basis for, the proposed rule;

(3) A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

(6) A description of any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the

proposed rule on small entities. 5 U.S.C. 603(b), (c).

1. Reasons for Considering Agency Action

PTC systems will be designed to prevent train-to-train collisions, overspeed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position.

As discussed in more detail in section I of the preamble, the RSIA08 mandates that widespread implementation of PTC across a major portion of the U.S. rail industry be accomplished by December 31, 2015. RSIA08 requires each Class I carrier and each entity providing regularly scheduled intercity or commuter rail passenger transportation to develop a plan for implementing PTC by April 16, 2010. The Secretary of Transportation is responsible for reviewing and approving or disapproving such plans. The Secretary has delegated this responsibility to FRA. This proposed rule details the process and procedure for obtaining FRA approval of the plans.

2. Legal Basis for the Proposed Rule

As discussed earlier in the preamble, FRA is issuing this proposed rule to provide regulatory guidance and performance standards for the development, testing, implementation, and use of Positive Train Control (PTC) systems for railroads mandated by the Rail Safety Improvement Act of 2008. section 104, Public Law 110–432, 122 Stat. 4848, 4856, (Oct. 16, 2008) (codified at 49 U.S.C. 20157).

3. Description and Estimate of Small Entities Affected

''Small entity'' is defined in 5 U.S.C. 601. Section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) includes not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operations within the definition of ''small entities.'' Additionally, section 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates ''size standards'' for small entities. It provides that the largest a for-profit railroad business firm may be (and still classify as a ''small entity'') is 1,500 employees for ''Line-Haul Operating'' railroads, and 500 employees for ''Short-Line Operating'' railroads. See ''Table of Size Standards,'' U.S. Small Business Administration, January 31, 1996, 13 CFR part 121; see also NAICS Codes 482111 and 482112.

SBA size standards may be altered by Federal agencies in consultation with SBA, and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad. See 68 FR 24,891 (May 9, 2003). Currently, the revenue requirements are $20 million or less in annual operating revenue, adjusted annually for inflation. The $20 million limit (adjusted annually for inflation) is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment. See also 49 CFR part 1201. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposes to use this definition for this rulemaking.

The IRFA's ''universe'' of considered entities generally includes only those small entities that can reasonably be expected to be directly regulated by the proposed action. One type of small entity is potentially affected by this proposed rule: railroads. The level of impact on small railroads will vary from railroad to railroad. Class III railroads will be impacted for one or more of the following reasons: (1) They operate on Class I railroad lines that carry PIH materials and are required to have PTC, in which case they would need to equip the portion of their locomotive fleet that operates on such lines; (2) they operate on Amtrak or commuter rail lines, including freight railroad lines that host such service; (3) they host regularly scheduled intercity or commuter rail transportation; or (4) they have at-grade railroad crossings over lines required by RSIA08 to have PTC. Generally, to the extent that Class III railroads incur costs associated with implementation of PTC it will limited to equipping locomotives, and not the wayside, for the reasons discussed below.

The proposed rule would apply to small railroads' tracks over which a passenger railroad conducts intercity or commuter operations and locomotives operating on main lines of Class I freight railroads required to have PTC and on railroads conducting intercity passenger or commuter operations. The impact on Class III railroads that operate on Class I railroad lines required to be equipped with PTC will depend on the nature of such operations. Class III railroads often make short moves on Class I railroad lines for interchange purposes. To the extent that their moves do not exceed four per day or 20 miles in length of haul (one way), Class III railroads will be exempt from the requirement to equip the locomotives. However some Class III railroads operate much more extensively on Class I railroad lines that will be required to have PTC and would have to equip some of their locomotives. It is likely that Class III railroads will dedicate certain locomotives to such service, if they have not done so already. FRA estimates that approximately 55 small railroads would have to equip locomotives with PTC system components because they have trackage rights on Class I freight railroad PIH lines that would be required to have PTC and would not be able to qualify for any of the operational exceptions discussed.

FRA further estimates that 10 small railroads have trackage rights on intercity passenger or commuter railroads or other freight railroads hosting such operations, and might need to equip some locomotives with PTC systems. Half of these would need to equip locomotives anyway, because they also have trackage rights on Class I railroads that haul PIH and would otherwise be required to have PTC.

Thus, a total of 60 railroads would need to equip locomotives. FRA estimates that the average small railroad will need to equip four locomotives, at a per railroad cost of $55,000 each, totaling $220,000, and that the total cost for all 60 small railroads which will need to equip locomotives would be $13,200,000. The annual maintenance cost would be 15% of that total, equaling $33,000 per railroad or $1,980,000 total for all small railroads. FRA requests comments regarding this cost estimate.

In addition, 15 small railroads host commuter or intercity passenger operations on what might be defined as main line track under the accompanying rulemaking; however, only five of these railroads are neither terminal or port railroads, which tend to be owned and operated by large railroads or port authorities, nor subsidiaries of large short line holding companies with the expertise and resources across the disciplines comparable to larger railroads. Of those five railroads, only one has trackage exceeding 3.8 miles. The other four railroads may request that FRA define such track as other than main line after ensuring that all trains

will be limited to restricted speed. The cost burden on the remaining railroad will likely be reduced by restricting speed, temporally separating passenger train operations, or by passing the cost to the passenger railroad. Thus, the expected burden to small entities hosting passenger operations is minimal. FRA requests comments related to this analysis.

At rail-to-rail crossings where at least one of the intersecting tracks allows operating speeds in excess of 40 miles per hour, the approaching non-PTC line must have a permanent maximum speed limit of 20 miles per hour and either have some type of positive stop enforcement or a split-point derail incorporated into the signal system on the non-PTC route.. FRA believes that the cost of the derail would be borne by the PTC-equipped railroad, and that slowing to 20 miles per hour reflects current practice at most diamond crossings. FRA estimates that ten crossings exist, on five small railroads with two crossings each, where the newly burdened small railroad will be slowing to 20 miles per hour from a higher track speed. FRA estimates that the average traffic on the newly burdened route is two trains per day, and that the cost to slow from a higher track speed is $30 per train, for a total cost of $60 per crossing per day, a per railroad cost of $120 per day, and a total national cost for all ten small railroads of $600 per day and an annual cost of $43,800 per railroad and a total for all small railroads of $219,000 per year. FRA estimates that only five railroads will be affected by this provision, and that they will be railroads not affected by the requirement to equip locomotives, because railroads with equipped locomotives could simply use the PTC system and avoid the requirement to slow down. This analysis yields a total of 65 affected small entities that may be impacted by implementation of the proposed rule. FRA requests comments regarding this estimate of small entities potentially impacted.

4. Description of Reporting, Recordkeeping, and Other Compliance Requirements and Impacts on Small Entities Resulting From Specific Proposed Requirements

Class III railroads that host intercity or commuter rail service will need to file implementation plans, whether or not they directly procure or manage installation of the PTC system. FRA believes that although the implementation plan must be jointly filed by the small host railroad and passenger tenant railroad, the cost of these plans will be borne by the passenger railroads. FRA believes that only one small entity, as described above, is likely to have PTC installed on its lines. The implementation plan is likely to be an extension of the passenger railroad's plan, and the marginal cost will be the cost of tailoring the plan to the host railroad, which will be borne by the passenger railroad, and maintaining copies of the plan at the host railroad, which FRA estimates to be approximately $1,000 per year.

The total cost to small entities would include the initial cost of equipping locomotives, $13,200,000; annual costs of $1,980,000 for maintenance; $219,000 due to operating speed restrictions at diamond crossings; and $1,000 to maintain a copy of the PTC implementation plan. The total annual costs to small entities after initial acquisition would be $2,200,000 ($1,980,000 + $219,000 + $1,000). Individual railroads affected would either face an initial cost of $220,000 to equip locomotives, and an annual cost of $33,000 to maintain the PTC systems on those locomotives, or would face a per railroad cost of $43,800 per year to slow at diamond crossings.

5. Identification of Relevant Duplicative, Overlapping, or Conflicting Federal Rules

There are no Federal rules that would duplicate, overlap, or conflict with this proposed rule.

6. Alternatives Considered

FRA is unaware of any significant alternatives that would meet the intent of RSIA08 and that would minimize the economic impact on small entities. FRA is exercising its discretion to provide the greatest flexibility for small entities available under RSIA08 by proposing to allow operations of unequipped trains operated by small entities on the main lines of Class I railroads, and in defining main track on passenger railroads to avoid imposing undue burdens on small entities. The definition of passenger main track was adopted based on PTC Working Group recommendations that were backed strongly by representatives of small railroads. The provisions permitting operations of unequipped trains of Class I railroads exceeded the maximum flexibility for which the PTC Working Group could reach a consensus. FRA requests comments on this finding of no significant alternative related to small entities. FRA also requests comments on whether this proposed regulation exercises the appropriate level of discretion and flexibility to comply with RSIA08 in the most cost effective and beneficial manner.

The process by which this proposed rule was developed provided outreach to small entities. As noted earlier in the preamble, this notice was developed in consultation with industry representatives via the RSAC, which includes small railroad representatives. From January to April 2009, FRA met with the entire PTC Working Group five times over the course of twelve days. This PTC Working Group established a task force to focus on issues specific to short line and regional railroads. The discussions yielded many insights and this proposed rule takes into account the concerns expressed by small railroads during the deliberations.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours
234.275—Processor-Based Systems—Deviations from Product Safety Plan (PSP)—Letters.	20 Railroads	25 letters	4	100
236.18—Software Mgmt Control Plan	184 Railroads	184 plans	2,150	395,600
—Updates to Software Mgmt. Control Plan	90 Railroads	20 updates	1.50	30
236.905—Updates to RSPP	78 Railroads	6 plans	135	810
—Response to Request For Additional Info	78 Railroads	1 updated doc	400	400

CFR section	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours
—Request for FRA Approval of RSPP Modification.	78 Railroads	1 request/modified RSPP	400	400
236.907—Product Safety Plan (PSP)—Dev	5 Railroads	5 plans	6,400	32,000
236.909—Minimum Performance Standard.				
—Petitions For Review and Approval	5 Railroads	2 petitions/PSP	19,200	38,400
—Supporting Sensitivity Analysis	5 Railroads	5 analyses	160	800
236.913—Notification/Submission to FRA of Joint Product Safety Plan (PSP).	6 Railroads	1 joint plan	25,600	25,600
—Petitions for Approval/Informational Filings	6 Railroads	6 petitions	1,928	11,568
—Responses to FRA Request For Further Info. After Informational Filing.	6 Railroads	2 documents	800	1,600
—Responses to FRA Request For Further Info. After Agency Receipt of Notice of Product Development.	6 Railroads	6 documents	16	96
—Consultations	6 Railroads	6 consults	120	720
—Petitions for Final Approval	6 Railroads	6 petitions	16	96
—Comments to FRA by Interested Parties	Public/RRs	7 comments	240	1,680
—Third Party Assessments of PSP	6 Railroads	1 assessment	104,000	104,000
—Amendments to PSP	6 Railroads	15 amendments	160	2,400
—Field Testing of Product—Info. Filings	6 Railroads	6 documents	3,200	19,200
236.917—Retention of Records.				
—Results of tests/inspections specified in PSP	6 Railroads	3 documents/records	160,000; 160,000; 40,000	360,000
—Report to FRA of Inconsistencies with frequency of safety-relevant hazards in PSP.	6 Railroads	1 report	104	104
236.919—Operations & Maintenance Man.				
—Updates to O & M Manual	6 Railroads	6 updated docs	40	240
—Plans For Proper Maintenance, Repair, Inspection of Safety-Critical Products.	6 Railroads	6 plans	53,335	320,010
—Hardware/Software/Firmware Revisions	6 Railroads	6 revisions	6,440	38,640
236.921—Training Programs: Development	6 Railroads	6 Tr. Programs	400	2,400
—Training of Signalmen & Dispatchers	6 Railroads	300 signalmen; 20 dispatchers.	40; 20	12,400
236.923—Task Analysis/Basic Requirements: Necessary Documents.	6 railroads	6 documents	720	4,320
—Records	6 railroads	350 records	[1] 10	58
SUBPART I—NEW REQUIREMENTS				
236.1001—RR Development of More Stringent Rules Re: PTC Performance Stds.	30 railroads	3 rules	80	240
236.1005—Requirements for PTC Systems.				
—Temporary Rerouting: Emergency Requests	30 railroads	50 requests	8	400
—Written/Telephonic Notification to FRA Regional Administrator.	30 railroads	50 notifications	2	100
—Temporary Rerouting Requests Due to Track Maintenance.	30 railroads	95 requests	8	760
—Temporary Rerouting Requests That Exceed 30 Days.	30 railroads	800 requests	8	6,400
236.1006—Requirements for Equipping Locomotives Operating in PTC Territory.				
—Reports of Movements in Excess of 20 Miles/RR Progress on PTC Locomotives.	35 railroads	35 reports	16	560
236.1007—Additional Requirements for High Speed Service.				
—Required HSR–125 Documents with approved PTCSP.	30 railroads	11 documents	3,200	35,200
—Requests to Use Foreign Service Data	30 railroads	2 requests	8,000	16,000
—PTC Railroads Conducting Operations at More than 150 MPH with HSR–125 Documents.	30 railroads	11 documents	4,000	44,000
236.1009–Procedural Requirements.				
—PTC Implementation Plans (PTCIP)	30 Railroads	30 plans	535	16,050
—Host Railroads Filing PTCIP or Request for Amendment (RFAs).	30 Railroads	1 PCTIP; 15 RFAs	535; 320	5,335
—Notification of Failure to File Joint PTCIP	30 Railroads	30 notifications	32	960
—Comprehensive List of Issues Causing Non-Agreement.	30 Railroads	30 lists	80	2,400
—Conferences to Develop Mutually Acceptable PCTIP.	30 Railroads	3 conf. calls	[1] 30	2
—Type Approval	30 Railroads	10 Type Appr.	8	80
—PTC Development Plans Requesting Type Approval.	30 Railroads	20 Ltr. + 20 App. + 5 Plans.	8; 8; 6,400	32,320

CFR section	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours
—PTCIP/PTCDP/PTCSP Plan Contents—Documents Translated into English.	30 Railroads	1 document	8,000	8,000
—Requests for Confidentiality	30 Railroads	30 ltrs; 30 docs	8; 800	24,240
—Field Test Plans/Independent Assessments—Req. by FRA.	30 Railroads	150 field tests; 2 assessments.	800	121,600
—FRA Access: Interviews with RR PTC Personnel.	30 Railroads	60 interviews	[1] 30	30
236.1011—PTCIP Requirements—Review and Public Comments on PTCIPs, PTCDPs, and PTCSPs.	7 Interested Groups	21 reviews + 60 comments.	143; 8	3,483
236.1015—PTCSP Content Requirements & PTC System Certification.				
—Non-Vital Overlay	30 Railroads	2 PTCSPs	16,000	32,000
—Vital Overlay	30 Railroads	16 PTCSPs	22,400	358,400
—Stand Alone	30 Railroads	10 PTCSPs	32,000	320,000
—Mixed Systems—Conference with FRA regarding Case/Analysis.	30 Railroads	3 conferences	32	96
—Mixed Sys. PTCSPs (incl. safety case)	30 Railroads	2 PTCSPs	28,800	57,600
—FRA Request for Additional PTCSP Data	30 Railroads	15 documents	3,200	48,000
—PTCSPs Applying to Replace Existing Certified PTC Systems.	30 Railroads	15 PTCSPs	3,200	48,000
—Non-Quantitative Risk Assessments Supplied to FRA.	30 Railroads	15 assessments	3,200	48,000
236.1017—PTCSP Supported by Independent Third Party Assessment.	30 Railroads	1 assessment	8,000	8,000
—Written Requests to FRA to Confirm Entity Independence.	30 Railroads	1 request	8	8
—Provision of Additional Information After FRA Request.	30 Railroads	1 document	160	160
—Independent Third Party Assessment: Waiver Requests.	30 Railroads	1 request	160	160
—RR Request for FRA to Accept Foreign Railroad Regulator Certified Info.	30 Railroads	1 request	32	32
236.1019—Main Line Track Exceptions.				
—Submission of Main Line Track Exclusion Addendums (MTEAs).	30 Railroads	30 MTEAs	160	4,800
—Passenger Terminal Exception—MTEAs	30 Railroads	23 MTEAs	160	3,680
—Limited Operation Exception—Risk Mitigation Plans.	30 Railroads	30 plans	160	4,800
—Temporal Separation Procedures	30 Railroads	15 procedures	160	2,400
236.1021—Discontinuances, Material Modifications, Amendments—Requests to Amend (RFA) PTCIP, PTCDP or PTCSP.	30 Railroads	15 RFAs	80	1,200
—Review and Public Comment on RFA	7 Interested Groups	7 reviews + 20 comments	3; 16	341
236.1023—PTC Errors and Malfunctions—Notifications.	30 Railroads	60 notifications	32	1,920
—Notifications of PTC Defect That Decreases Safety.	30 Railroads	150 notifications	16	2,400
—Notification Updates of PTC Defect	30 Railroads	150 updates	16	2,400
—PTC Product Vendor Lists (PTCPVL)	30 Railroads	30 lists	8	240
—RR Procedures Upon Notification of PTC System Safety-Critical Upgrades, Rev., Etc.	30 Railroads	30 procedures	16	480
—Manufacturer's Report of Investigation of PTC Defect.	5 System Suppliers	5 reports	400	2,000
236.1029—Report of On-Board Lead Locomotive PTC Device Failure.	30 Railroads	960 reports	96	92,160
236.1031—Previously Approved PTC Systems.				
—Request for Expedited Certification (REC) for PTC System.	30 Railroads	3 REC Letters	160	480
—Requests for Grandfathering on PTCSPs	30 Railroads	3 requests	1,600	4,800
236.1035—Field Testing Requirements	30 railroads	150 field test plans	800	120,000
236.1037—Records Retention.				
—Results of Tests in PTCSP and PTCDP	30 railroads	960 records	4	3,840
—PTC Service Contractors Training Records	30 Railroads	9,000 records	[1] 30	4,500
—Reports of Safety Relevant Hazards Exceeding Those in PTCSP and PTCDP.	30 Railroads	4 reports	8	32
—Final Report of Resolution of Inconsistency	30 Railroads	4 final reports	160	640
236.1039—Operations & Maintenance Manual (OMM): Development.	30 railroads	30 manuals	250	7,500
—Positive Identification of Safety-critical Components.	30 railroads	75,000 i.d. components	1	75,000
—Designated RR Officers in OMM regarding PTC issues.	30 railroads	60 designations	2	120

CFR section	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours
236.1041—PTC Training Programs	30 Railroads	30 programs	400	12,000
236.1043—Task Analysis/Basic Requirements: Training Evaluations.	30 railroads	6 evaluations	720	4,320
—Training Records	30 railroads	350 records	[1] 10	58
236.1045—Training Specific to Office Control Personnel.	30 railroads	20 trained employees	20	400
236.1047—Training Specific to Loc. Engineers & Other Operating Personnel.				
—PTC Conductor Training	30 railroads	5,000 trained conductors	3	15,000

[1] In minutes.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Nakia Jackson at 202–493–6073.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Nakia Jackson, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Jackson at the following address: *robert.brogan@dot.gov*; *nakia.jackson@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 4, 1999).

As discussed earlier in the preamble, this proposed rule would provide regulatory guidance and performance standards for the development, testing, implementation, and use of Positive Train Control (PTC) systems for railroads mandated by the Railroad Safety Improvement Act of 2008.

Executive Order 13132 requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' Policies that have ''Federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the proposed regulation. Where a regulation has Federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has determined that this proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this proposed rule, which is required by the Railroad Safety Improvement Act of 2008, would not impose any direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule would have preemptive effect. Section 20106 of Title 49 of the United States Code provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the local safety or security exception to section 20106. The intent of § 20106 is to promote national uniformity in railroad safety and security standards. 49 U.S.C. 20106(a)(1). Thus, subject to a limited exception for essentially local safety or security hazards, this proposed rule would establish a uniform Federal safety standard that must be met, and State requirements covering the same subject matter would be displaced, whether those State requirements are in the form of a State law, regulation, or order.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no Federalism implications, other than the preemption of State laws covering the subject matter

of this proposed rule, which occurs by operation of law under 49 U.S.C. 20106 whenever FRA issues a rule or order. Accordingly, FRA has determined that preparation of a Federalism summary impact statement for this proposed rule is not required.

E. Environmental Impact

FRA has evaluated this proposed rule in accordance with its ''Procedures for Considering Environmental Impacts'' (''FRA's Procedures'') (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). The value equivalent of $100 million in CY 195, adjusted annually for inflation to CY 2008 levels by the Consumer Price Index for All Urban Consumers (CPI–U) is $141.3 million. The assessment may be included in conjunction with other assessments, as it is here.

The proposed rule itself would not create an unfunded mandate in excess of the threshold amount. The bulk of unfunded mandate for implementation of PTC is attributable to RSIA08. The effects are discussed earlier in this document in the Regulatory Impact Analysis. Any unfunded mandates attributable to the proposed rulemaking would pertain to the costs of filing paperwork to prove compliance with RSIA08.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this proposed rule in accordance with Executive Order 13211. FRA has determined that this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant regulatory action'' within the meaning of Executive Order 13211.

H. Privacy Act

FRA wishes to inform all interested parties that anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document), if submitted on behalf of an association, business, labor union, *etc.*). Interested parties may also review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.regulations.gov.*

List of Subjects

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 235

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 236

Penalties, Positive Train Control, Railroad safety, Reporting and recordkeeping requirements.

VIII. The Rule

In consideration of the foregoing, FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 28 U.S.C. 2401, note; and 49 CFR 1.49(c), (m).

2. Section 229.135 is amended by revising paragraphs (b)(3)(xxv) and (b)(4)(xxi) to read as follows:

§ 229.135 Event Recorders.

* * * * *

(b) * * *

(3) * * *

(xxv) Safety-critical train control data routed to the locomotive engineer's display with which the engineer is required to comply, specifically including text messages conveying mandatory directives and maximum authorized speed. The format, content, and proposed duration for retention of such data shall be specified in the product safety plan or PTC Safety Plan submitted for the train control system under subparts H or I, respectively, of part 236 of this chapter, subject to FRA approval under this paragraph. If it can be calibrated against other data required by this part, such train control data may, at the election of the railroad, be retained in a separate certified crashworthy memory module.

(4) * * *

(xxi) Safety-critical train control data routed to the locomotive engineer's display with which the engineer is required to comply, specifically including text messages conveying mandatory directives and maximum authorized speed. The format, content, and proposed duration for retention of such data shall be specified in the product safety plan or PTC Safety Plan submitted for the train control system under subparts H or I, respectively, of part 236 of this chapter, subject to FRA approval under this paragraph. If it can be calibrated against other data required by this part, such train control data may, at the election of the railroad, be retained in a separate certified crashworthy memory module.

PART 234—[AMENDED]

3. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

4. In § 234.275 revise paragraphs (b)(1), (b)(2), (c), and (f) to read as follows:

§ 234.275 Processor-based systems.

* * * * *

(b) *Use of performance standard authorized or required.* (1) In lieu of compliance with the requirements of this subpart, a railroad may elect to qualify an existing processor-based product under part 236, subparts H or I, of this chapter.

(2) Highway-rail grade crossing warning systems, subsystems, or components that are processor-based and that are first placed in service after June 6, 2005, which contain new or novel technology, or which provide safety-critical data to a railroad signal or train control system that is governed by part 236, subpart H or I, of this chapter, shall also comply with those requirements. New or novel technology refers to a technology not previously recognized for use as of March 7, 2005.

* * * * *

(c) *Plan justifications.* The Product Safety Plan in accordance with 49 CFR 236.903—or a PTC Development Plan (PTCDP) and PTC Safety Plan (PTCSP) required to be filed in accordance with 49 CFR 236.1011 and 236.1013—must explain how the performance objective sought to be addressed by each of the particular requiremnts of this subpart is met by the product, why the objective is not relevant to the product's design, or how the safety requirements are satisfied using alternative means. Deviation from those particular requirements is authorized if an adequate explanation is provided, making reference to relevant elements of the applicable plan, and if the product satisfies the performance standard set forth in § 236.909 of this chapter. (See § 236.907(a)(14) of this chapter.)

* * * * *

(f) *Software management control for certain systems not subject to a performance standard.* Any processor-based system, subsystem, or component subject to this part, which is not subject to the requirements of part 236, subpart H or I, of this chapter but which provides safety-critical data to a signal or train control system shall be included in the software management control plan requirements as specified in § 236.18 of this chapter.

PART 235—[AMENDED]

5. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

6. In § 235.7, add paragraph (a)(5) to read as follows:

§ 235.7 Changes not requiring filing of application.

(a) * * *

(5) Removal of an intermittent automatic train stop system in conjunction with the implementation of a positive train control system approved by FRA under subpart I of part 236.

* * * * *

PART 236—[AMENDED]

7. The authority citation for Part 236 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20157, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

* * * * *

8. Section 236.0 is amended by revising paragraphs (c) through (e) to read as follows:

§ 236.0 Applicability, minimum requirements, and penalties.

* * * * *

(c)(1) Prior to [insert date 24 months from publication of the final rule in the **Federal Register**], where a passenger train operates at a speed of 60 or more miles per hour, or a freight train operates at a speed of 50 or more miles per hour—

(i) A block signal system complying with the provisions of this part shall be installed; or

(ii) A manual block system shall be placed permanently in effect that shall conform to the following conditions:

(A) A train shall not be admitted, except for emergency purposes, to a block occupied by another train unless both trains are operating at restricted speed.

(B) A freight train, including a work train, may be authorized to follow a freight train, including a work train, into a block but the following train must proceed at restricted speed.

(2) On and after [insert date 24 months from publication of the final rule in the **Federal Register**], where a passenger train is permitted to operate at a speed of 60 or more miles per hour, or a freight train is permitted to operate at a speed of 50 or more miles per hour, a block signal system complying with the provisions of this part shall be installed, unless an FRA approved PTC system meeting the requirements of this part for the subject speed and other operating conditions, is installed.

(d)(1) Prior to December 31, 2015, where any train is permitted to operate at a speed of 80 or more miles per hour, an automatic cab signal, automatic train stop, or automatic train control system complying with the provisions of this part shall be installed, unless an FRA approved PTC system meeting the requirements of this part for the subject speed and other operating conditions, is installed.

(2) Subpart I of this part sets forth requirements for installation of PTC systems under conditions specified in that subpart.

(e) Nothing in this section authorizes the discontinuance of a block signal system, interlocking, traffic control system, automatic train control or train stop system, cab signal system, or PTC system without approval by the FRA under part 235 of this title. However, a railroad may apply for approval of discontinuance or material modification of a signal or train control system in connection with a request for approval of a Positive Train Control Development Plan (PTCDP) or Positive Train Control Safety Plan (PTCSP) as provided in subpart I of this part.

* * * * *

9. Section 236.909 is amended by adding a new sentence directly after the first sentence of paragraph (e)(1) and by revising paragraph (e)(2)(i) to read as follows:

§ 236.909 Minimum performance standards.

* * * * *

(e) * * *

(1) * * * The total risk assessment must have a supporting sensitivity analysis. The analysis must confirm that the risk metrics of the system are not negatively affected by sensitivity analysis input parameters including, for example, component failure rates, human factor error rates, and variations in train traffic affecting exposure. The sensitivity analysis must document the sensitivity to worst case failure scenarios. * * *

(2) * * *

(i) In all cases exposure must be expressed as total train miles traveled per year over the relevant railroad infrastructure. Consequences must identify the total cost, including fatalities, injuries, property damage, and other incidental costs, such as potential consequences of hazardous materials involvement, resulting from preventable accidents associated with the function(s) performed by the system.

* * * * *

10. Add a new subpart I to part 236 to read as follows:

Subpart I—Positive Train Control Systems

Sec.

236.1001 Purpose and scope.
236.1003 Definitions.

236.1005 Requirements for Positive Train Control systems.
236.1006 Equipping locomotives operating in PTC territory.
236.1007 Additional requirements for high-speed service.
236.1009 Procedural requirements.
236.1011 PTCIP content requirements.
236.1013 PTCDP content requirements and Type Approval.
236.1015 PTCSP content requirements and PTC System Certification.
236.1017 Independent third party Verification and Validation.
236.1019 Main line track exceptions.
236.1021 Discontinuances, material modifications, and amendments.
236.1023 Errors and malfunctions.
236.1027 Exclusions.
236.1029 PTC system use and en route failures.
236.1031 Previously approved PTC systems
236.1033 Communications and security requirements.
236.1035 Field testing requirements.
236.1037 Records retention.
236.1039 Operations and Maintenance Manual.
236.1041 Training and qualification program, general.
236.1043 Task analysis and basic requirements.
236.1045 Training specific to office control personnel.
236.1047 Training specific to locomotive engineers and other operating personnel.
236.1049 Training specific to roadway workers.

Subpart I—Positive Train Control Systems

§ 236.1001 Purpose and scope.

(a) This subpart prescribes minimum, performance-based safety standards for PTC systems required by 49 U.S.C. 20157, this subpart, or an FRA order including requirements to ensure that the development, functionality, architecture, installation, implementation, inspection, testing, operation, maintenance, repair, and modification of those PTC systems will achieve and maintain an acceptable level of safety. This subpart also prescribes standards to ensure that personnel working with, and affected by, safety-critical PTC system related products receive appropriate training and testing.

(b) Each railroad may prescribe additional or more stringent rules, and other special instructions, that are not inconsistent with this subpart.

(c) This subpart does not exempt a railroad from compliance with any requirement of subpart A through H of this part or parts 233, 234, and 235 of this chapter, unless:

(1) it is otherwise explicitly excepted by this subpart; or

(2) the applicable PTCSP, as defined under § 236.1003 and approved by FRA under § 236.1015 provides for such an exception per § 236.1013.

§ 236.1003 Definitions.

(a) Definitions contained in subparts G and H of this part apply equally to this subpart.

(b) The following definitions apply to terms used only in this subpart unless otherwise stated:

After-arrival mandatory directive means any mandatory directive that makes the authority for train movement contingent upon the arrival of another train.

Associate Administrator means the FRA Associate Administrator for Railroad Safety and Chief Safety Officer.

Class I railroad means a railroad which in the last year for which revenues were reported exceeded the threshold established under regulations of the Surface Transportation Board (49 CFR part 1201.1–1 (2008)).

Cleartext means the un-encrypted text in its original, human readable, form. It is the input of an encryption or encipher process, and the output of an decryption or decipher process.

Host railroad means a railroad that has effective operating control over a segment of track.

Interoperability means the ability of a controlling locomotive to communicate with and respond to the PTC railroad's positive train control system, including uninterrupted movements over property boundaries.

Limited operations means operations on main line track that have limited or no freight operations and are approved to be excepted from this subpart's PTC system implementation and operation requirements in accordance with § 236.1019(c);

Main line means, except as provided in § 236.1019 or where all trains are limited to restricted speed within a yard or terminal area or on auxiliary or industry tracks, a segment or route of railroad tracks:

(1) of a Class I railroad, as documented in current timetables filed by the Class I railroad with the FRA under § 217.7 of this title, over which 5,000,000 or more gross tons of railroad traffic is transported annually; or

(2) used for regularly scheduled intercity or commuter passenger service, as defined in 49 U.S.C. 24102, or both. Tourist, scenic, historic, or excursion operations as defined in part 238 of this chapter are not considered intercity or commuter passenger service for purposes of this part.

Main line track exclusion addendum (''MTEA'') means the document submitted under §§ 236.1011 and 236.1019 requesting to designate track as other than main line.

PTC means positive train control as further described in § 236.1005.

PTCDP means a PTC Development Plan as further described in § 236.1013.

PTCIP means a PTC Implementation Plan as required under 49 U.S.C. 20157 and further described in § 236.1011.

PTC railroad means each Class I railroad and each entity providing regularly scheduled intercity or commuter rail passenger transportation required to implement or operate a PTC system.

PTCSP means a PTC Safety Plan as further described in § 236.1015.

PTCPVL means a PTC Product Vendor List as further described in § 236.1023.

PTC System Certification means certification as required under 49 U.S.C. 20157 and further described in §§ 236.1009 and 236.1015.

Request for Amendment (''RFA'') means a request for an amendment of a plan or system made by a PTC railroad in accordance with § 236.1021.

Request for Expedited Certification (''REC'') means, as further described in § 236.1031, a request by a railroad to receive expedited consideration for PTC System Certification.

Restricted speed means, *Speed, restricted,* as defined in subpart G of this part.

Safe State means a system configuration that cannot cause harm when the system fails.

Segment of track means any part of the railroad where a train operates.

Temporal separation means the process or processes in place to assure that limited passenger and freight operations do not operate on any segment of shared track during the same period and as further defined under § 236.1019.

Tenant railroad means a railroad, other than a host railroad, operating on track upon which a PTC system is required.

Track segment means segment of track.

Type Approval means a number assigned to a particular PTC system indicating FRA agreement that the PTC system could fulfill the requirements of this subpart.

Train means one or more locomotives, coupled with or without cars.

§ 236.1005 Requirements for Positive Train Control systems.

(a) *PTC system requirements.* Each PTC system required to be installed under this subpart shall:

(1) Reliably and functionally prevent:

(i) Train-to-train collisions—including collisions between trains operating over at-grade crossings of rail lines—where the risk associated with such collisions

is unacceptable in accordance with the following table or alternative arrangements providing an equivalent level of safety as specified in an FRA approved PTCSP:

Crossing type	Max speed *	Protection required
Interlocking—one or more PTC routes intersecting with one or more non-PTC routes.	≤40 miles per hour	Interlocking signal arrangement in accordance with the requirements of subparts A–G of this part and PTC enforced stop on PTC routes.
Interlocking—one or more PTC routes intersecting with one or more non-PTC routes.	>40 miles per hour	Interlocking signal arrangement in accordance with the requirements of subparts A–G of this part, PTC enforced stop on all PTC routes, and either the use of other than full PTC technology that provides positive stop enforcement or a split-point derail incorporated into the signal system accompanied by 20 miles per hour maximum allowable speed on the approach of any intersecting non-PTC route.
Interlocking—all PTC routes intersecting	Any speed	Interlocking signal arrangements in accordance with the requirements of subparts A–G of this part, and PTC enforced stop on all routes.

(ii) Overspeed derailments, including derailments related to railroad civil engineering speed restrictions, slow orders, and excessive speeds over switches and through turnouts;

(iii) Incursions into established work zone limits without first receiving appropriate authority and verification from the dispatcher or roadway worker in charge, as applicable and in accordance with part 214 of this chapter; and

(iv) The movement of a train through a main line switch in the improper position as further described in paragraph (e) of this section.

(2) Include safety-critical integration of all authorities and indications of a wayside or cab signal system, or other similar appliance, method, device, or system of equivalent safety, in a manner by which the PTC system shall provide associated warning and enforcement to the extent, and except as, described and justified in the FRA approved PTCDP or PTCSP, as applicable;

(3) As applicable, perform the additional functions specified in this subpart;

(4) Provide an appropriate warning or enforcement when:

(i) A derail or switch protecting access to the main line required by § 236.1007, or otherwise provided for in the applicable PTCSP, is not in its derailing or protecting position, respectively;

(ii) An operational restriction is issued associated with a highway-rail grade crossing warning system malfunction as required by §§ 234.105, 234.106, or 234.107;

(iii) An after-arrival mandatory directive has been issued and the train or trains to be waited on has not yet passed the location of the receiving train;

(iv) Any movable bridge within the route ahead is not in a position to allow permissive indication for a train movement pursuant to § 236.312; and

(v) A hazard detector integrated into the PTC system that is required by paragraph (c) of this section, or otherwise provided for in the applicable PTCSP, detects an unsafe condition or transmits an alarm; and

(5) Limit the speed of passenger and freight trains to 59 miles per hour and 49 miles per hour, respectively, in areas without broken rail detection or equivalent safeguards.

(b) *PTC system installation.* (1) After December 31, 2015, a PTC system certified under § 236.1015 shall be installed by the host railroad on each:

(i) Main line over which is transported any quantity of poison- or toxic-by-inhalation (PIH) hazardous materials, as defined in §§ 171.8, 173.115 and 173.132 of this title;

(ii) Main line used for regularly provided intercity or commuter passenger service, except as provided in § 236.1019; and

(iii) Additional line of railroad as required by the applicable FRA-approved PTCSP, this subpart, or an FRA order requiring installation of a PTC system.

(2) For the purposes of paragraph (b)(1)(i) of this section, the information necessary to determine whether a Class I railroad's track segment shall be equipped with a PTC system shall be determined and reported as follows:

(i) The traffic density threshold of 5 million gross tons shall be based upon calendar year 2008 gross tonnage.

(ii) The presence or absence of any quantity of PIH hazardous materials shall be determined by whether one or more cars containing such product(s) was transported over the line segment in calendar year 2008.

(3) To the extent increases in freight rail traffic occur subsequent to calendar year 2008 that might affect the requirement to install a PTC system on any line not yet equipped, the railroad shall seek to amend its PTCIP by promptly filing an RFA in accordance with § 236.1021. The following criteria apply:

(i) To the extent rail traffic exceeds 5 million gross tons in any year after 2008, the tonnage shall be calculated for the preceding two calendar years in determining whether a PTCIP or its amendment is required.

(ii) To the extent PIH traffic is carried on a line segment as a result of a request for rail service or rerouting warranted under part 172 of this title, and if the line carries in excess of 5 million gross tons of rail traffic as determined under this paragraph. This does not apply when temporary rerouting is authorized in accordance with paragraph (g) of this section.

(iii) Once a railroad is notified by FRA that its RFA filed in accordance with this paragraph has been approved, the railroad shall equip the line with the applicable PTC system by December 31, 2015, or within 24 months, whichever is later.

(4) If a railroad has filed, and FRA has approved, its initial PTCIP, a railroad may file an RFA to request review of the requirement to install PTC on a line segment where a PTC system is required, but has not yet been installed, based upon changes in rail traffic such as reductions in total traffic volume or cessation of local PIH service. Any such RFA shall be accompanied by estimated traffic projections for the next 5 years (*e.g.*, as a result of planned rerouting, coordinations, location of new business on the line). Where the request involves prior or planned rerouting of PIH traffic, the railroad must provide a supporting analysis that takes into consideration the requirements of subpart I, part 172 of this title, including any railroad-specific and interline routing impacts. FRA may approve the RFA if FRA finds that it would be consistent with safety and in the public interest.

(5) After December 31, 2015, no intercity or commuter rail passenger service shall continue or commence

until a PTC system certified under this subpart has been installed and made operative.

(c) *Hazard detectors.* (1) All hazard detectors integrated into a signal or train control system on or after October 16, 2008, shall be integrated into PTC systems required by this subpart; and their warnings shall be appropriately and timely enforced as described in the applicable PTCSP.

(2) The applicable PTCSP may provide for receipt and presentation to the locomotive engineer and other train crew of warnings from additional hazard detectors using the PTC data network, onboard displays, and audible alerts. If the PTCSP so provides, the action to be taken by the system and by the crew members shall be specified.

(3) The PTCDP (as applicable) and PTCSP for any service described in § 236.1007 to be conducted above 90 miles per hour shall include a hazard analysis describing the hazards relevant to the specific route(s) in question (*e.g.,* potential for track obstruction due to events such as falling rock or undermining of the track structure due to high water or displacement of a bridge over navigable waters), the basis for decisions concerning hazard detectors provided, and the manner in which such additional hazard detectors will be interfaced with the PTC system.

(d) *Event recorders.* (1) Each lead locomotive, as defined in part 229, of a train equipped and operating with a PTC system required by this subpart must be equipped with an operative event recorder, which shall:

(i) Record safety-critical train control data routed to the locomotive engineer's display that the engineer is required to comply with;

(ii) Specifically include text messages conveying mandatory directives and maximum authorized speeds; and

(iii) Include the display format, content, and data retention duration requirements specified in the PTC safety plan submitted and approved pursuant to this paragraph. If such train control data can be calibrated against other data required by this part, it may, at the election of the railroad, be retained in a separate memory module.

(2) Each lead locomotive, as defined in part 229, manufactured and in service after October 1, 2009, that is equipped and operating with a PTC system required by this subpart, shall be equipped with an event recorder memory module meeting the crash hardening requirements of § 229.135 of this chapter.

(3) Nothing in this subpart excepts compliance with any of the event recorder requirements contained in § 229.135 of this chapter.

(e) *Switch position.* The following requirements apply with respect to determining proper switch position under this section. When a main line switch position is unknown or improperly aligned for a train's route in advance of the train's movement, the PTC system will provide warning of the condition associated with the following enforcement:

(1) A PTC system must enforce restricted speed over any switch:

(i) Where train movements are made with the benefit of the indications of a wayside or cab signal system or other similar appliance, method, device, or system of equivalent safety proposed to FRA and approved by the Associate Administrator in accordance with this part; and

(ii) Where wayside or cab signal system or other similar appliance, method, device, or system of equivalent safety requires the train to be operated at restricted speed.

(2) A PTC system must enforce a positive stop short of any main line switch, and any switch on a siding where the allowable speed is in excess of 20 miles per hour, if movement of the train over the switch:

(i) Is made without the benefit of the indications of a wayside or cab signal system or other similar appliance, method, device, or system of equivalent safety proposed to FRA and approved by the Associate Administrator in accordance with this part; or

(ii) Would create an unacceptable risk. Unacceptable risk includes conditions when traversing the switch, even at low speeds, could result in direct conflict with the movement of another train (including a hand-operated crossover between main tracks, a hand-operated crossover between a main track and an adjoining siding or auxiliary track, or a hand-operated switch providing access to another subdivision or branch line, *etc.*).

(3) A PTC system required by this subpart shall be designed, installed, and maintained to perform the switch position detection and enforcement described in paragraphs (e)(1) and (e)(2) of this section, except as provided for and justified in the applicable, FRA-approved PTCDP or PTCSP.

(4) The control circuit or electronic equivalent for any movement authorities over any switches, movable-point frogs, or derails shall be selected through circuit controller or functionally equivalent device operated directly by switch points, derail, or by switch locking mechanism, or through relay or electronic device controlled by such circuit controller or functionally equivalent device, for each switch, movable-point frog, or derail in the route governed. Circuits or electronic equivalent shall be arranged so that any movement authorities can only be provided when each switch, movable-point frog, or derail in the route governed is in proper position, and shall be in accordance with subparts A through G of this part unless it is otherwise provided in a PTCSP approved under this subpart.

(f) *Train-to-train collision.* A PTC system shall be considered to be configured to prevent train-to-train collisions within the meaning of paragraph (a) of this section if trains are required to be operated at restricted speed and if the onboard PTC equipment enforces the upper limits of the railroad's restricted speed rule (15 or 20 miles per hour). This application applies to:

(1) Operating conditions under which trains are required by signal indication or operating rule to:

(i) Stop before continuing; or

(ii) Reduce speed to restricted speed and continue at restricted speed until encountering a more favorable indication or as provided by operating rule.

(2) Operation of trains within the limits of a joint mandatory directive.

(g) *Temporary rerouting.* A train equipped with a PTC system as required by this subpart may be temporarily rerouted onto a track not equipped with a PTC system and a train not equipped with a PTC system may be temporarily rerouted onto a track equipped with a PTC system as required by this subpart in the following circumstances:

(1) *Emergencies.* In the event of an emergency—including conditions such as derailment, flood, fire, tornado, hurricane, or other similar circumstance outside of the railroad's control—that would prevent usage of the regularly used track if:

(i) The rerouting is applicable only until the emergency condition ceases to exist and for no more than 14 consecutive calendar days, unless otherwise extended by approval of the Associate Administrator;

(ii) The railroad provides written or telephonic notification to the applicable Regional Administrator of the information listed in paragraph (i) within one business day of the beginning of the rerouting made in accordance with this paragraph; and

(iii) The conditions under paragraph (j) are followed.

(2) *Planned maintenance.* In the event of planned maintenance that would

prevent usage of the regularly used track if:

(i) The maintenance period does not exceed 30 days;

(ii) A request is filed with the applicable Regional Administrator in accordance with paragraph (i) of this section no less than 10 business days prior to the planned rerouting; and

(iii) the conditions contained in paragraph (j) of this section are followed.

(h) *Rerouting requests.* (1) For the purposes of paragraph (g)(2) of this section, the rerouting request shall be self-executing unless the applicable Regional Administrator responds with a notice disapproving of the rerouting or providing instructions to allow rerouting. Such instructions may include providing additional information to the Regional Administrator or Associate Administrator prior to the commencement of rerouting. Once the Regional Administrator responds with a notice under this paragraph, no rerouting may occur until the Regional Administrator or Associate Administrator provides his or her approval.

(2) In the event the temporary rerouting described in paragraph (g)(2) of this section is to exceed 30 consecutive calendar days:

(i) The railroad shall provide a request in accordance with paragraphs (i) and (j) of this section with the Associate Administrator no less than 10 business days prior to the planned rerouting; and

(ii) The rerouting contemplated by this paragraph shall not commence until receipt of approval from the Associate Administrator.

(i) *Content of rerouting request.* Each notice or request referenced in paragraph (g) of this section must indicate:

(1) The dates that such temporary rerouting will occur;

(2) The number and types of trains that will be rerouted;

(3) The location of the affected tracks; and

(4) A description of the necessity for the temporary rerouting.

(j) *Rerouting conditions.* Rerouting of operations under paragraph (g) of this section may only occur if:

(1) An absolute block is established in advance of each rerouted train movement; and

(2) Each rerouted train movement shall not exceed 59 miles per hour for passenger and 49 miles per hour for freight.

(k) *Rerouting cessation.* The applicable Regional Administrator may order a railroad to cease any rerouting provided under paragraph (g) or (h) of this section.

§ 236.1006 Equipping locomotives operating in PTC territory.

(a) Except as provided in paragraph (b) of this section, each train operating on any track segment equipped with a PTC system shall be controlled by a locomotive equipped with an on-board PTC apparatus that is fully operative and functioning in accordance with the applicable PTCSP approved under this subpart.

(b) *Exceptions.* (1) Prior to December 31, 2015, each train controlled by a locomotive not equipped with an onboard PTC apparatus is permitted to operate.

(2) Prior to December 31, 2013, each train controlled by a locomotive equipped with an onboard PTC apparatus that is not fully operative is permitted only if:

(i) The subject locomotive failed initialization at the point of origin for the train or at the location where the locomotive was added to the train;

(ii) The railroad has included in its FRA approved PTC Implementation Plan a system for identifying PTC system reliability exceptions and responding with appropriate remedial actions, the railroad executes that plan, and the documentation for execution of the plan is currently available to FRA upon request; and

(iii) The percentage of controlling locomotives operating out of each railroad's initial terminals after receiving a failed initialization and over a track segment equipped with a PTC system, does not during each calendar month exceed:

(A) 20 percent until December 31, 2011;

(B) 15 percent from the end of the period in paragraph (A) to December 31, 2012; and

(C) 10 percent from the end of the period in paragraph (B) to December 31, 2013.

(3) A train controlled by a locomotive with an onboard PTC apparatus that has failed en route is permitted to operate in accordance with § 236.1029.

(4) A train operated by a Class II or Class III railroad, including a tourist or excursion railroad, and controlled by a locomotive not equipped with an onboard PTC apparatus is permitted to operate on a PTC operated track segment:

(i) That either:

(A) Has no regularly scheduled intercity or passenger rail passenger transportation traffic; or

(B) Has regularly scheduled intercity or passenger rail passenger transportation traffic and the applicable PTCIP permits the operation of a train operated by a Class II or III railroad and controlled by a locomotive not equipped with an onboard PTC apparatus;

(ii) Where operations are restricted to less than four such unequipped trains per day, whereas a train conducting a ''turn'' operation (*e.g.,* moving to a point of interchange to drop off or pick up cars and returning to the track owned by a Class II or III railroad) is considered two trains for this purpose; and

(iii) Where each movement shall either:

(A) Not exceed 20 miles in length; or

(B) To the extent any movement exceeds 20 miles in length, such movement is not permitted without the controlling locomotive being equipped with an onboard PTC system after December 31, 2020, and each applicable Class II or III railroad shall report to FRA its progress in equipping each necessary locomotive with an onboard PTC apparatus to facilitate continuation of the movement. The progress reports shall be filed not later than December 31, 2017 and, if all necessary locomotives are not yet equipped, on December 31, 2019.

(c) When a train movement is conducted under the exceptions described in paragraph (b)(4) of this section, that movement shall be made in accordance with § 236.1029.

§ 236.1007 Additional requirements for high-speed service.

(a) A PTC railroad that conducts a passenger operation at or greater than 60 miles per hour or a freight operation at or greater than 50 miles per hour shall have installed a PTC system including or working in concert with technology that includes all of the safety-critical functional attributes of a block signal system meeting the requirements of this part, including appropriate fouling circuits and broken rail detection (or equivalent safeguards).

(b) In addition to the requirements of paragraph (a), a host railroad that conducts a freight or passenger operation at more than 90 miles per hour shall:

(1) Have an approved PTCSP establishing that the system was designed and will be operated to meet the failsafe operation criteria described in Appendix C to this part; and

(2) Prevent unauthorized or unintended entry onto the main line from any track not equipped with a PTC system compliant with this subpart by placement of split-point derails or equivalent means integrated into the PTC system; and

(3) Comply with § 236.1029(c).

(c) In addition to the requirements of paragraphs (a) and (b), a host railroad that conducts a freight or passenger operation at more than 125 miles per hour shall have an approved PTCSP accompanied by a document (''HSR–125'') establishing that the system:

(1) Will be operated at a level of safety comparable to that achieved over the 5-year period prior to the submission of the PTCSP by other train control systems that perform PTC functions required by this subpart, and which have been utilized on high-speed rail systems with similar technical and operational characteristics in the United States or in foreign service, provided that the use of foreign service data must be approved by the Associate Administrator before submittal of the PTCSP; and

(2) Has been designed to detect incursions into the right-of-way, including incidents involving motor vehicles diverting from adjacent roads and bridges, where conditions warrant.

(d) In addition to the requirements of paragraphs (a) through (c) of this section, a host railroad that conducts a freight or passenger operation at more than 150 miles per hour, which is governed by a Rule of Particular Applicability, shall have an approved PTCSP accompanied by a HSR–125 developed as part of an overall system safety plan approved by the Associate Administrator.

§ 236.1009 Procedural requirements.

(a) *PTC Implementation Plan (PTCIP).* (1) By April 16, 2010, each host railroad that is required to implement and operate a PTC system in accordance with § 236.1005(b) shall develop and submit in accordance with § 236.1011(a) a PTCIP for implementing a PTC system required under § 236.1005. Filing of the PTCIP shall not exempt the required filings of a PTCSP, PTCDP, or Type Approval.

(2) After April 16, 2010, a host railroad shall file:

(i) A PTCIP if it becomes a host railroad of a main line track; or

(ii) A request for amendment (''RFA'') of its current and approved PTCIP in accordance with § 236.1021 if it intends to:

(A) Initiate a new category of service (*i.e.,* passenger or freight); or

(B) Add, subtract, or otherwise materially modify one or more lines of railroad for which installation of a PTC system is required.

(3) If the host railroad is a freight railroad, and the subject trackage would require installation and operation of a PTC system in accordance with §§ 236.1005(b)(2) or (b)(3), then a PTCIP required to be filed in accordance with this paragraph (a)(1) or (a)(2) of this section must be jointly filed with each entity providing regularly scheduled intercity or commuter rail passenger transportation over that subject trackage. If railroads are unable to jointly file a PTCIP in accordance with paragraphs (a)(1) and (a)(3) of this section, then they each shall:

(i) Separately file a PTCIP in accordance with paragraph (a)(1);

(ii) Notify the Associate Administrator that the subject railroads were unable to agree on a PTCIP to be jointly filed;

(iii) Provide the Associate Administrator with a comprehensive list of all issues not in agreement between the railroads that would prevent the subject railroads from jointly filing the PTCIP; and

(iv) Confer with the Associate Administrator to develop and submit a PTCIP mutually acceptable to all subject railroads.

(b) *Type Approval.* A host railroad, or one or more system suppliers and one or more host railroads, shall file prior to or simultaneously with the filing made in accordance with paragraph (a) of this section:

(1) An unmodified Type Approval previously issued by the Associate Administrator in accordance with § 236.1013 or § 236.1031(b) with its associated docket number;

(2) A PTCDP requesting a Type Approval for:

(i) A PTC system that does not have a Type Approval; or

(ii) A PTC system with a previously issued Type Approval that requires one or more variances;

(3) A PTCSP subject to the conditions set forth in paragraph (c) of this section, with or without a Type Approval; or

(4) A document attesting that a Type Approval is not necessary since the host railroad has no territory for which a PTC system is required under this subpart.

(c) *PTCSP and PTC System Certification.* The following apply to each PTCSP and PTC System Certification.

(1) A PTC System Certification for a PTC system may be obtained by submitting an acceptable PTCSP. If the PTC system is the subject of a Type Approval, the safety case elements contained in the PTCDP may be incorporated by reference into the PTCSP, subject to finalization of the human factors analysis contained in the PTCDP.

(2) Each PTCSP requirement under § 236.1015 shall be supported by information and analysis sufficient to establish that the requirements of this subpart have been satisfied.

(3) If the Associate Administrator finds that the PTCSP and supporting documentation support a finding that the system complies with this part, the Associate Administrator may approve the PTCSP. If the Associate Administrator approves the PTCSP, the railroad shall receive PTC System Certification for the subject PTC system and shall implement the PTC system according to the PTCSP.

(4) A required PTC system shall not:

(i) Be used in service until it receives from FRA a PTC System Certification; and

(ii) Receive a PTC System Certification unless FRA receives and approves an applicable:

(A) PTCIP and PTCSP; or

(B) Request for Expedited Certification (REC) as defined by § 236.1031(a).

(d) *Plan contents.* (1) No PTCIP shall receive approval unless it complies with § 236.1011. No railroad shall receive a Type Approval or PTC System Certification unless the applicable PTCDP or PTCSP, respectively, comply with §§ 236.1013 and 236.1015, respectively.

(2) All materials filed in accordance with this subpart must be in the English language, or have been translated into English and attested as true and correct.

(3) Each filing referenced in this section may include a request for full or partial confidentiality in accordance with § 209.11 of this chapter. If confidentiality is requested as to a portion of any applicable document, then in addition to the filing requirements under § 209.11 of this chapter, the person filing the document shall also file a copy of the original unredacted document, marked to indicate which portions are redacted in the document's confidential version without obscuring the original document's contents.

(e) *Supporting documentation and information.* (1) Issuance of a Type Approval or PTC System Certification is contingent upon FRA's confidence in the implementation and operation of the subject PTC system. This confidence may be based on FRA-monitored field testing or an independent assessment performed in accordance with § 236.1035 or § 236.1017, respectively.

(2) Upon request by FRA, the railroad requesting a Type Approval or PTC System Certification must engage in field testing or independent assessment performed in accordance with § 236.1035 or § 236.1017, respectively, to support the assertions made in any of the plans submitted under this subpart. These assertions include any of the

plans' content requirements under this subpart.

(f) *FRA conditions, reconsiderations, and modifications.* (1) As necessary to ensure safety, FRA may attach special conditions to approving a PTCIP or issuing a Type Approval or PTC System Certification.

(2) After granting a Type Approval or PTC System Certification, FRA may reconsider the Type Approval or PTC System Certification upon revelation of any of the following factors concerning the contents of the PTCIP, PTCDP or PTCSP:

(i) Potential error or fraud;

(ii) Potentially invalidated assumptions determined as a result of in-service experience or one or more unsafe events calling into question the safety analysis supporting the approval.

(3) During FRA's reconsideration in accordance with this paragraph, the PTC system may remain in use if otherwise consistent with the applicable law and regulations and FRA may impose special conditions for use of the PTC system.

(4) After FRA's reconsideration in accordance with this paragraph, FRA may:

(i) Dismiss its reconsideration and continue to recognize the existing FRA approved Type Approval;

(ii) Allow continued operations under such conditions the Associate Administrator deems necessary to ensure safety; or

(iii) Revoke the Type Approval or PTC System Certification and direct the railroad to cease operations where PTC systems are required under this subpart.

(g) *FRA access.* The Associate Administrator, or that person's designated representatives, shall be afforded reasonable access to monitor, test, and inspect processes, procedures, facilities, documents, records, design and testing materials, artifacts, training materials and programs, and any other information used in the design, development, manufacture, test, implementation, and operation of the system, as well as interview any personnel:

(1) Associated with a PTC system for which a Type Approval or PTC System Certification has been requested or provided; or

(2) To determine whether a railroad has been in compliance with this subpart.

(h) *Foreign regulatory entity verification.* Information that has been certified under the auspices of a foreign regulatory entity recognized by the Associate Administrator may, at the Associate Administrator's sole discretion, be accepted as independently Verified and Validated and used to support each railroad's development of the PTCSP.

§ 236.1011 PTCIP content requirements.

(a) *Contents.* A PTCIP filed pursuant to this subpart shall, at a minimum, describe:

(1) The technology that will be employed;

(2) How the PTC railroad intends to comply with § 236.1009(c);

(3) How the PTC system will provide for interoperability of the system between the host and all tenant railroads on the lines required to be equipped with PTC systems under this subpart and:

(i) Include copies of relevant provisions of any agreements, executed by all applicable railroads, in place to achieve interoperability;

(ii) List all technologies used to obtain interoperability; and

(iii) Identify any railroads with respect to which interoperability agreements or compatible technology have not been achieved as of the time the plan is filed, the practical obstacles that were encountered that prevented resolution, and the further steps planned to overcome those obstacles;

(4) How, to the extent practical, the PTC system will be implemented to address areas of greater risk to the public and railroad employees before areas of lesser risk;

(5) The sequence and schedule in which line segments will be equipped and the basis for those decisions, and shall at a minimum address the following risk factors by line segment:

(i) Segment traffic characteristics such as typical annual passenger and freight train volume and volume of poison- or toxic-by-inhalation (PIH or TIH) shipments (loads, residue);

(ii) Segment operational characteristics such as current method of operation (including presence or absence of a block signal system), number of tracks, and maximum allowable train speeds, including planned modifications; and

(iii) Route attributes bearing on risk, including ruling grades and extreme curvature;

(6) The following information relating to rolling stock:

(i) What rolling stock will be equipped with PTC technology;

(ii) The schedule to equip that rolling stock by December 31, 2015; and

(iii) Unless the tenant railroad is filing its own PTCIP, the host railroad's PTCIP shall:

(A) Attest that the host railroad has made a formal written request to each tenant railroad requesting identification of each rolling stock to be PTC system equipped and the date each will be equipped; and

(B) Include each tenant railroad's response to the host railroad's written request made in accordance with paragraph (a)(6)(iii)(A) of this section;

(7) The number of wayside devices required for each line segment and the installation schedule to complete wayside equipment installation by December 31, 2015;

(8) which track segments the railroad considers mainline and non-mainline track. If the PTCIP includes a MTEA, as defined by § 236.1019, the PTCIP should identify the tracks included in the MTEA as main line track with a reference to the MTEA; and

(9) to the extent the railroad determines that risk-based prioritization required by paragraph (a)(4) of this section is not practical, the basis for this determination; and

(b) Additional *Class I railroad PTCIP requirements.* Each Class I railroad shall include:

(1) In its PTCIP a strategy for full deployment of its PTC system, describing the criteria that it will apply in identifying additional rail lines on its own network, and rail lines of entities that it controls or engages in joint operations with, for which full or partial deployment of PTC technologies is appropriate, beyond those required to be equipped under this subpart. Such criteria shall include consideration of the policies established by 49 U.S.C. 20156 (railroad safety risk reduction program), and regulations issued thereunder, as well as non-safety business benefits that may accrue.

(2) In the Technology Implementation Plan of its Risk Reduction Program, when first required to be filed in accordance with 49 U.S.C. 20156 and any regulation promulgated thereunder, a specification of rail lines selected for full or partial deployment of PTC under the criteria identified in its PTCIP.

(3) Nothing in this paragraph shall be construed to create an expectation or requirement than additional rail lines beyond those required to be equipped by this subpart must be equipped or that such lines will be equipped during the period of primary implementation ending December 31, 2015.

(4) As used in this paragraph, ''partial implementation'' of a PTC system refers to use, pursuant to subpart H of this part, of technology embedded in PTC systems that does not employ all of the functionalities required by this subpart.

(c) *FRA review.* Within 90 days of receipt of a PTCIP, the Associate Administrator will approve or disapprove of the plan and notify in

writing the affected railroad or other entity. If the PTCIP is not approved, the notification will include the plan's deficiencies. Within 30 days of receipt of that notification, the railroad or other entity that submitted the plan shall correct all deficiencies and resubmit the plan in accordance with § 236.1009 and paragraph (a) of this section, as applicable.

(d) *Subpart H.* A railroad that elects to install a PTC system when not required to do so may elect to proceed under this subpart or under subpart H.

(e) Upon receipt of a PTCIP, PTCDP, or PTCSP, FRA posts on its public Web site notice of receipt and reference to the public docket in which a copy of the filing has been placed. FRA may consider any public comment on each document to the extent practicable within the time allowed by law and without delaying implementation of PTC systems.

§ 236.1013 PTCDP content requirements and Type Approval.

(a) For a PTC system to obtain a Type Approval from FRA, the PTCDP shall be filed in accordance with § 236.1009 and shall include:

(1) A complete description of the PTC system, including a list of all PTC system components and their physical relationships in the subsystem or system;

(2) A description of the railroad operation or categories of operations on which the PTC system is designed to be used, including train movement density (passenger, freight), operating speeds, track characteristics, and railroad operating rules;

(3) An operational concepts document, including a list with complete descriptions of all functions which the PTC system will perform to enhance or preserve safety;

(4) A document describing the manner in which the PTC architecture satisfies safety requirements;

(5) A description of the safety assurance concepts that are to be used for system development, including an explanation of the design principles and assumptions;

(6) A preliminary human factors analysis, including a complete description of all human-machine interfaces and the impact of interoperability requirements on the same;

(7) An analysis of the applicability to the PTC system of the requirements of subparts A–G of this part that may no longer apply or are satisfied by the PTC system using an alternative method, and a complete explanation of the manner in which those requirements are otherwise fulfilled;

(8) A description of the necessary security measures for the system;

(9) A description of target safety levels (*e.g.,* MTTHE for major subsystems as defined in subpart H), including requirements for system availability and a description of all backup methods of operation and any critical assumptions associated with the target levels;

(10) A complete description of how the PTC system will enforce authorities and signal indications;

(11) A description of the deviation required under § 236.1029(c), if applicable; and

(12) A complete description of how the PTC system will appropriate and timely enforce all integrated hazard detectors in accordance with § 236.1005(c)(3), if applicable.

(b) If the Associate Administrator finds that the system described in the PTCDP would satisfy the requirements for PTC systems under this subpart and that the applicant has made a reasonable showing that a system built to the stated requirements would achieve the level of safety mandated for such a system under § 236.1015, the Associate Administrator may grant a numbered Type Approval for the system.

(c) Each Type Approval shall be valid for a period of 5 years, subject to automatic and indefinite extension provided that at least one PTC System Certification using the subject PTC system has been issued within that period and not revoked.

(d) A PTCSP submitted under this subpart may reference and utilize in accordance with this subpart any Type Approval previously issued by the Associate Administrator to any railroad, provided that the railroad:

(1) Maintains a continually updated PTCPVL pursuant to § 236.1023; and

(2) Provides the applicable licensing information.

(e) A railroad submitting a PTCDP under this subpart must show that the supplier from which they are procuring the PTC system has established and can maintain a quality control system for PTC system design and manufacturing acceptable to the Associate Administrator.

(f) The Associate Administrator may prescribe special conditions, amendments, and restrictions to any Type Approval as necessary for safety.

§ 236.1015 PTCSP content requirements and PTC System Certification.

(a) Before placing a PTC system required under this part in service, the host railroad must submit to FRA a PTCSP and receive a PTC System Certification. If the Associate Administrator finds that the PTCSP and supporting documentation support a finding that the system complies with this part, the Associate Administrator approves the PTCSP and issues a PTC System Certification. Receipt of a PTC System Certification affirms that the PTC system has been reviewed and approved by FRA in accordance with, and meets the requirements of, this part.

(b) A PTCSP submitted in accordance with this subpart shall:

(1) Include the applicable FRA approved PTCIP and, if applicable, the PTCDP and Type Approval;

(2)(i) Specifically and rigorously document each variance, including the significance of each variance between the PTC system and its applicable operating conditions as described in the applicable PTCIP and any applicable PTCDP from that as described in the PTCSP, and attest that are no other such variances; or

(ii) Attest that there are no variances between the PTC system and its applicable operating conditions as described in the applicable PTCIP and any applicable PTCDP from that as described in the PTCSP; and

(3) Attest that the system was otherwise built in accordance with the applicable PTCDP and PTCSP and achieves the level of safety represented therein.

(c) A PTCSP shall include the same information required for a PTCDP under § 236.1013(a). If a PTCDP has been filed and approved prior to filing of the PTCSP, PTCSP may incorporate the PTCDP by reference, with the exception that a final human factors analysis shall be provided. The PTCSP shall contain the following additional elements:

(1) A hazard log consisting of a comprehensive description of all safety-relevant hazards not previously addressed by the vendor to be addressed during the life cycle of the PTC system, including maximum threshold limits for each hazard (for unidentified hazards, the threshold shall be exceeded at one occurrence);

(2) A risk assessment of the as-built PTC system described;

(3) A hazard mitigation analysis, including a complete and comprehensive description of each hazard and the mitigation techniques used;

(4) A complete description of the safety assessment and Verification and Validation processes applied to the PTC system, their results, and whether these processes address the safety principles described in Appendix C to this part directly, using other safety criteria, or not at all;

(5) A complete description of the railroad's training plan for railroad and contractor employees and supervisors necessary to ensure safe and proper installation, implementation, operation, maintenance, repair, inspection, testing, and modification of the PTC system;

(6) A complete description of the specific procedures and test equipment necessary to ensure the safe and proper installation, implementation, operation, maintenance, repair, inspection, testing, and modification of the PTC system on the railroad and establish safety-critical hazards are appropriately mitigated. These procedures, including calibration requirements, shall be consistent with or explain deviations from the equipment manufacturer's recommendations;

(7) A complete description of any additional warning to be placed in the Operations and Maintenance Manual in the same manner specified in § 236.919 and all warning labels to be placed on equipment as necessary to ensure safety;

(8) A complete description of the configuration or revision control measures designed to ensure that the railroad or its contractor does not adversely affect the safety-functional requirements and that safety-critical hazard mitigation processes are not compromised as a result of any such change;

(9) A complete description of all initial implementation testing procedures necessary to establish that safety-functional requirements are met and safety-critical hazards are appropriately mitigated;

(10) A complete description of all post-implementation testing (validation) and monitoring procedures, including the intervals necessary to establish that safety-functional requirements, safety-critical hazard mitigation processes, and safety-critical tolerances are not compromised over time, through use, or after maintenance (adjustment, repair, or replacement) is performed;

(11) A complete description of each record necessary to ensure the safety of the system that is associated with periodic maintenance, inspections, tests, adjustments, repairs, or replacements, and the system's resulting conditions, including records of component failures resulting in safety-relevant hazards (see § 236.1033);

(12) A safety analysis to determine whether, when the system is in operation, any risk remains of an unintended incursion into a roadway work zone due to human error. If the analysis reveals any such risk, the PTCDP and PTCSP shall describe how that risk will be mitigated;

(13) A more detailed description of any alternative arrangements as already provided under § 236.1011(a)(10);

(14) A complete description of how the PTC system will enforce authorities and signal indications, unless already completely provided for in the PTCDP;

(15) A description of how the PTCSP complies with § 236.1019(e), if applicable;

(16) A description of the deviation required under § 236.1029(c), if applicable and unless already completely provided for in the PTCDP;

(17) A complete description of how the PTC system will appropriate and timely enforce all integrated hazard detectors in accordance with § 236.1005;

(18) An emergency and planned maintenance temporary rerouting plan indicating how operations on the subject PTC system will take advantage of the benefits provided under § 236.1005(g)–(k); and

(19) Any alternative arrangements for each rail at-grade crossing not adhering to the table under § 236.1005(a)(1)(i).

(d) The following additional requirements apply to:

(1) *Non-vital overlay.* A PTC system proposed as an overlay on the existing method of operation and not built in accordance with the safety assurance principles set forth in Appendix C of this part must, to the satisfaction of the Associate Administrator, be shown to:

(i) Reliably execute the functions set forth in § 236.1005;

(ii) Obtain at least 80 percent reduction of the risk associated with accidents preventable by the functions set forth in § 236.1005, when all effects of the change associated with the PTC system are taken into account. The supporting risk assessment shall evaluate all intended changes in railroad operations coincident with the introduction of the new system; and

(iii) Maintain a level of safety for each subsequent system modification that is equal to or greater than the level of safety for the previous PTC systems.

(2) *Vital overlay.* A PTC system proposed on a newly constructed track or as an overlay on the existing method of operation and is built in accordance with the safety assurance principles set forth in Appendix C of this part must, to the satisfaction of the Associate Administrator, be shown to:

(i) Reliably execute the functions set forth in § 236.1005; and

(ii) Have sufficient documentation to demonstrate that the PTC system, as built, fulfills the safety assurance principles set forth in Appendix C of this part. The supporting risk assessment may be abbreviated as that term is used in subpart H of this part.

(3) *Stand-alone.* A PTC system proposed on a newly constructed track, an existing track for which no signal system exists, as a replacement for an existing signal or train control system, or to otherwise intend to replace or materially modify the existing method of operation, shall:

(i) Demonstrate to reliably execute the functions required by § 236.1005; and

(ii) Have a PTCSP establishing, with a high degree of confidence, that the system will not introduce new hazards that have not been mitigated. The supporting risk assessment shall evaluate all intended changes in railroad operations in relation to the introduction of the new system and shall examine in detail the direct and indirect effects of all changes in the method of operations.

(4) *Mixed systems.* If a PTC system combining overlay, stand-alone, vital, or non-vital characteristics is proposed, the railroad shall confer with the Associate Administrator regarding appropriate structuring of the safety case and analysis.

(e) When determining whether the PTCSP fulfills the requirements under paragraph (d) of this section, the Associate Administrator may consider all available evidence concerning the reliability and availability of the proposed system and any and all safety consequences of the proposed changes. In any case where the PTCSP lacks data regarding safety impacts of the proposed changes, the Associate Administrator may request the necessary data from the applicant. If the requested data is not provided, the Associate Administrator may find that potential hazards could or will arise.

(f) If a PTCSP applies to a system designed to replace an existing certified PTC system, the PTCSP will be approved provided that the PTCSP establishes with a high degree of confidence that the new system will provide a level of safety not less than the level of safety provided by the system to be replaced.

(g) When reviewing the issue of the potential data errors (for example, errors arising from data supplied from other business systems needed to execute the braking algorithm, survey data needed for location determination, or mandatory directives issued through the computer-aided dispatching system), the PTCSP must include a careful identification of each of the risks and a discussion of each applicable mitigation. In an appropriate case, such as a case in which the residual risk after mitigation is substantial or the underlying method of operation will be significantly altered, the Associate

Administrator may require submission of a quantitative risk assessment addressing these potential errors.

§ 236.1017 Independent third party Verification and Validation.

(a) The PTCSP must be supported by an independent third-party assessment when the Associate Administrator concludes that it is necessary based upon the same criteria set forth in § 236.913 of this chapter, with the exception that consideration of the methodology used in the risk assessment (§ 236.913(g)(2)(vii)) shall apply only to the extent that a comparative risk assessment was required. To the extent practicable, FRA makes this determination not later than review of the PTCIP and the accompanying PTCDP or PTCSP. If an independent assessment is required, the assessment may apply to the entire system or a designated portion of the system.

(b) If a PTC system is to undergo an independent assessment in accordance with this section, it may submit to the Associate Administrator a written request that FRA confirm whether a particular entity would be considered an independent third party pursuant to this section. The request should include supporting information in accordance with paragraph (c) of this section. FRA may request further information to make a determination or provide its determination in writing.

(c) As used in this section, ''independent third party'' means a technically competent entity responsible to and compensated by the railroad (or an association on behalf of one or more railroads) that is independent of the PTC system supplier and vendor. An entity that is owned or controlled by the supplier or vendor, that is under common ownership or control with the supplier or vendor, or that is otherwise involved in the development of the PTC system is not considered ''independent'' within the meaning of this section.

(d) The independent third party assessment must, at a minimum, consist of the activities and result in the production of documentation meeting the requirements of Appendix F to this part, unless excepted by this part or by FRA order or waiver.

(e) Information provided that has been certified under the auspices of a foreign railroad regulatory entity recognized by the Associate Administrator may, at the Associate Administrator's discretion, be accepted as having been independently verified.

§ 236.1019 Main line track exceptions.

(a) *Scope and procedure.* This section pertains exclusively to exceptions from the rule that trackage over which scheduled intercity and commuter passenger service is provided is considered main line track requiring installation of a PTC system. One or more intercity or commuter passenger railroads, or freight railroads conducting joint passenger and freight operation over the same segment of track may file a main line track exclusion addendum (''MTEA'') to its PTCIP requesting to designate track as not main line subject to the condition that such trackage may not be trackage otherwise required to be equipped (*e.g.,* because of tonnage and PIH traffic) and to the further conditions set forth in paragraphs (b) and (c) of this section. No track shall be designated as yard or terminal unless it is identified in a MTEA that is part of an FRA approved PTCIP.

(b) *Passenger terminal exception.* FRA will consider an exception in the case of trackage used exclusively as yard or terminal tracks by or in support of regularly scheduled intercity or commuter passenger service where the MTEA describes in detail the physical boundaries of the trackage in question, its use and characteristics (including track and signal charts) and all of the following apply:

(1) The maximum authorized speed for all movements is not greater than 20 miles per hour, and that maximum is enforced by any available onboard PTC equipment within the confines of the yard or terminal;

(2) Interlocking rules are in effect prohibiting reverse movements other than on signal indications without dispatcher permission; and

(3) No freight operations are permitted.

(c) *Limited operations exception.* FRA will consider an exception in the case of trackage used for limited operations by at least one passenger railroad subject to at least one of the following conditions:

(1) All trains are limited to restricted speed;

(2) Temporal separation of passenger and other trains is maintained as provided in paragraph (d) of this section; or

(3) Passenger service is operated under a risk mitigation plan submitted by all railroads involved in the joint operation and approved by FRA. The risk mitigation plan must be supported by a risk assessment establishing that the proposed mitigations will achieve a level of safety not less than the level of safety that would obtain if the operations were conducted under paragraph (c)(1) or (c)(2) of this section.

(d) *Temporal separation.* As used in this section, temporal separation means the processes or physical arrangements, or both, in place to assure that limited passenger and freight operations do not operate on any segment of shared track during the same period. The use of exclusive authorities under mandatory directives is not, by itself, sufficient to establish that temporal separation is achieved. Procedures to ensure temporal separation shall include verification checks between passenger and freight and effective physical means to positively ensure segregation of passenger and freight operations in accordance with this paragraph.

(e) *PTCSP requirement.* No PTCSP filed after the approval of a PTCIP with an MTEA shall be approved by FRA unless it attests that no changes, except for those included in a FRA approved RFA, have been made to the information in the PTCIP and MTEA required by paragraph (b) or (c) of this section.

(f) *Designation modifications.* If subsequent to approval of its PTCIP or PTCSP the railroad seeks to modify which track or tracks should be designated as main line or not main line, it shall request modification of its PTCIP or PTCSP, as applicable, in accordance with § 236.1021.

§ 236.1021 Discontinuances, material modifications, and amendments.

(a) No changes, as defined by this section, to a PTC system, PTCIP, PTCDP, or PTCSP, shall be made unless:

(1) The railroad files a request for amendment (''RFA'') to the applicable PTCIP, PTCDP, or PTCSP with the Associate Administrator; and

(2) The Associate Administrator approves the RFA.

(b) After approval of a RFA in accordance with paragraph (a) of this section, the railroad shall immediately adopt and comply with the amendment.

(c) In lieu of a separate filing under part 235 of this chapter, a railroad may request approval of a discontinuance or material modification of a signal or train control system by filing a RFA to its PTCIP, PTCDP, or PTCSP with the Associate Administrator.

(d) A RFA made in accordance with this section will not be approved by FRA unless the request includes:

(1) The information listed in § 235.10 of this chapter and the railroad provides FRA upon request any additional information necessary to evaluate the RFA (see § 235.12), including:

(2) The proposed modifications;

(3) The reasons for each modification;

(4) The changes to the PTCIP, PTCDP or PTCSP, as applicable;

(5) Each modification's effect on PTC system safety;

(6) An approximate timetable for filing of the PTCDP, PTCSP, or both, if the amendment pertains to a PTCIP; and

(7) An explanation of whether each change to the PTCSP is planned or unplanned.

(A) Unplanned changes that affect the Type Approval's PTCDP require submission and approval in accordance with § 236.1013 of a new PTCDP, followed by submission and approval in accordance with § 236.1015 of a new PTCSP for the PTC system.

(B) Unplanned changes that do not affect the Type Approval's PTCDP require submission and approval of a new PTCSP.

(C) Unplanned changes are changes affecting system safety that have not been documented in the PTCSP. The impact of unplanned changes on PTC system safety has not yet been determined.

(D) Planned changes may be implemented after they have undergone suitable regression testing to demonstrate, to the satisfaction of the Associate Administrator, they have been correctly implemented and their implementation does not degrade safety.

(E) Planned changes are changes affecting system safety in the PTCSP and have been included in all required analysis under § 236.1017. The impact of these changes on the PTC system's safety has been incorporated as an integral part of the approved PTCSP safety analysis.

(e) If the RFA includes a request for approval of a discontinuance or material modification of a signal or train control system, FRA will publish a notice in the **Federal Register** of the application and will invite public comment in accordance with part 211 of this chapter.

(f) When considering the RFA, FRA will review the issue of the discontinuance or material modification and determine whether granting the request is in the public interest and consistent with railroad safety, taking into consideration all changes in the method of operation and system functionalities, both within normal PTC system availability and in the case of a system failed state (unavailable), contemplated in conjunction with installation of the PTC system. The railroad submitting the RFA must, at FRA's request, perform field testing in accordance with § 236.1035 or engage in Verification and Validation in accordance with § 236.1017.

(g) FRA may issue at its discretion a new Type Approval number for a PTC system modified under this section.

(h) *Changes requiring filing of an RFA.* Except as provided by paragraph (i), an RFA shall be filed to request the following:

(1) Discontinuance of a PTC system, or other similar appliance or device;

(2) Decrease of the PTC system's limits;

(3) Modification of a safety critical element of a PTC system; or

(4) Modification of a PTC system that affects the safety critical functionality of any other PTC system with which it interoperates.

(i) *Discontinuances not requiring the filing of an RFA.* It is not necessary to file an RFA for the following discontinuances:

(1) Removal of a PTC system from track approved for abandonment by formal proceeding;

(2) Removal of PTC devices used to provide protection against unusual contingencies such as landslide, burned bridge, high water, high and wide load, or tunnel protection when the unusual contingency no longer exists;

(3) Removal of the PTC devices that are used on a movable bridge that has been permanently closed by the formal approval of another government agency and is mechanically secured in the closed position for rail traffic; or

(4) Removal of the PTC system from service for a period not to exceed six months that is necessitated by catastrophic occurrence such as derailment, flood, fire, or hurricane.

(j) *Changes not requiring the filing of an RFA.* When the resultant change to the PTC system will comply with an approved PTCSP of this part, it is not necessary to file for approval to decrease the limits of a system when it involves the:

(1) Decrease of the limits of a PTC system when interlocked switches, derails, or movable-point frogs are not involved;

(2) Removal of an electric or mechanical lock from hand-operated switch in a PTC system where train speed over switch does not exceed 20 miles per hour; or

(3) Removal of an electric lock from hand-operated switch in a PTC system where trains are not permitted to clear the main track at such switch and the electric lock has not been a part of the conditional approval of a PTCSP.

(k) *Modifications not requiring the filing of an RFA.* When the resultant arrangement will comply with an approved PTCSP of this part, it is not necessary to file an application for approval of the following modifications:

(1) A modification that is required to comply with an order of the Federal Railroad Administration or any section of part 236 of this title;

(2) Installation of devices used to provide protection against unusual contingencies such as landslide, burned bridges, high water, high and wide loads, or dragging equipment;

(3) Elimination of existing track other than a second main track;

(4) Extension or shortening of a passing siding;

(5) A line relocation;

(6) Installation of new track; or

(7) The temporary or permanent arrangement of existing systems necessitated by highway rail separation construction. Temporary arrangements shall be removed within six months following completion of construction.

§ 236.1023 Errors and malfunctions.

(a) Except as provided in paragraph (g) of this section, when any PTC system, subsystem, component, product, or process fails, malfunctions, or otherwise experiences a defect that decreases, or eliminates, any safety functionality, its vendor—regardless of whether any railroad has indicated whether it experienced the same—shall notify FRA and the affected railroads of the following:

(1) The nature and specificity of the failure, malfunction, or defect;

(2) The vendor's procedures for responding to the issue until the failure, malfunction, or defect is cured;

(3) Any corrective action required;

(4) The risk mitigation actions to be taken pending resolution of the failure cause and issuance of the corrective action; and

(5) The estimated time to correct the failure.

(b) Any railroad implementing or operating a PTC system, subsystem, component, product, or process that fails, malfunctions, or otherwise experiences a defect that decreases, or eliminates, any safety or interoperability functionality, shall:

(1) Notify the applicable vendor and FRA of the failure, malfunction, or defect that decreased or eliminated the safety functionality; and

(2) Keep the applicable vendor and FRA apprised on a continual basis of the status of any and all subsequent failures.

(c) Each railroad implementing a PTC system on its property shall maintain a PTC Product Vendor List (PTCPVL) continually updated to include all vendors of each PTC system, subsystem, component, product, and process currently used in its PTC system. The PTCPVL shall be made available to FRA upon request and without undue delay.

(d) The railroad shall specify to FRA—and the applicable vendor if

appropriate—its procedures for action upon notification of a safety critical upgrade, patch, or revision for the PTC system, subsystem, component, product, or process, and until the revision has been installed.

(e) Each notification required by this section shall:

(1) Be made within 7 days after the vendor or railroad discovers the failure, malfunction, or defect. However, a report that is due on a Saturday or a Sunday may be delivered on the following Monday and one that is due on a holiday may be delivered on the next workday;

(2) Be transmitted in a manner and form acceptable to the Associate Administrator and by the most expeditious method available; and

(3) Include as much available and applicable information as possible, including:

(i) PTC system name and model;

(ii) Identification of the part, component, or system involved. The identification must include the part number;

(iii) Nature of the failure, malfunctions, or defects;

(iv) Mitigation to ensure the safety of the crews and public; and

(v) The estimated time to correct the failure.

(f) Whenever any investigation of an accident or service difficulty report shows that an article is unsafe because of a manufacturing or design defect, the manufacturer shall, upon request of the Associate Administrator, report to the Associate Administrator the results of its investigation and any action taken or proposed by the manufacturer to correct that defect.

(g) The requirements of this section do not apply to failures, malfunctions, or defects that:

(1) Are caused by improper maintenance or improper usage; or

(2) Have been previously identified to the FRA, vendor, and applicable railroads.

(h) Any railroad experiencing a failure of a system resulting in a more favorable aspect than intended or another condition hazardous to movement of a train shall comply with the reporting requirements, including the making of a telephonic report of an accident or incident under part 233 of this chapter. Filing of one or more reports under part 233 of this chapter does not exempt a railroad or vendor from the reporting requirements contained in paragraphs (a) through (e) of this section.

§ 236.1027 Exclusions.

(a) The requirements of this subpart apply to each office automation system that performs safety-critical functions within, or affects the safety performance of, the PTC system. For purposes of this section, ''office automation system'' means any centralized or distributed computer-based system that directly or indirectly controls the active movement of trains in a rail network.

(b) Changes or modifications to PTC systems otherwise excluded from the requirements of this subpart by this section do not exclude those PTC systems from the requirements of this subpart if the changes or modifications result in a degradation of safety or a material decrease in safety-critical functionality.

(c) Primary train control systems cannot be integrated with locomotive electronic systems unless the complete integrated systems:

(1) Have been shown to be designed on fail safe principles;

(2) Have demonstrated to operate in a fail safe mode;

(3) Have a manual fail safe fallback and override to allow the locomotive to be brought to a safe stop in the event of any loss of electronic control; and

(4) Are included in the approved and applicable PTCDP and PTCSP.

(d) PTC systems excluded by this section from the requirements of this subpart remain subject to subparts A through H of this part as applicable.

§ 236.1029 PTC system use and en route failures.

(a) When any safety-critical PTC system component fails to perform its intended function, the cause must be determined and the faulty component adjusted, repaired, or replaced without undue delay. Until repair of such essential components are completed, a railroad shall take appropriate action as specified in its PTCSP.

(b) Where a PTC onboard apparatus on a lead locomotive that is operating in or is to be operated within a PTC system fails or is otherwise cut-out while en route (i.e., after the train has departed it's initial terminal), the train may only continue in accordance with the following:

(1) The train may proceed at restricted speed, or if a block signal system is in operation according to signal indication at medium speed, to the next available point where communication of a report can be made to a designated railroad officer of the host railroad;

(2) Upon completion and communication of the report required in paragraph (b)(1) of this section, or where immediate electronic report of said condition is appropriately provided by the PTC system itself, a train may continue to a point where an absolute block can be established in advance of the train in accordance with the following:

(i) Where no block signal system is in use, the train may proceed at restricted speed, or

(ii) Where a block signal system is in operation according to signal indication, the train may proceed at a speed not to exceed medium speed.

(3) Upon reaching the location where an absolute block has been established in advance of the train, as referenced in paragraph (b)(2) of this section, the train may proceed in accordance with the following:

(i) Where no block signal system is in use, the train may proceed at medium speed; however, if the involved train is a passenger train or a train hauling any amount of PIH material, it may only proceed at a speed not to exceed 30 miles per hour.

(ii) Where a block signal system is in use, a passenger train may proceed at a speed not to exceed 59 miles per hour and a freight train may proceed at a speed not to exceed 49 miles per hour.

(iii) Except as provided in paragraph (c), where a cab signal system with an automatic train control system is in operation, the train may proceed at a speed not to exceed 79 miles per hour.

(c) In order for a PTC train that operates at a speed above 90 miles per hour to deviate from the operating limitations contained in paragraph (b) of this section, the deviation must be described and justified in the FRA approved PTCDP or PTCSP, or the Order of Particular Applicability, as applicable.

(d) Each railroad shall comply with all provisions in the applicable PTCDP and PTCSP for each PTC system it uses and shall operate within the scope of initial operational assumptions and predefined changes identified.

(e) The normal functioning of any safety-critical PTC system must not be interfered with in testing or otherwise without first taking measures to provide for the safe movement of trains, locomotives, roadway workers, and on-track equipment that depend on the normal functioning of the system.

(f) The PTC system's onboard apparatus shall be so arranged that each member of the crew assigned to perform duties in the locomotive can view a PTC display and execute any functions necessary to that crew member's duties. The locomotive engineer shall not be required to perform functions related to the PTC system while the train is moving that have the potential to distract the locomotive engineer from performance of other safety-critical duties.

§ 236.1031 Previously approved PTC systems.

(a) Any PTC system fully implemented and operational prior to [insert effective date of final rule], may receive PTC System Certification if the applicable PTC railroad, or one or more system suppliers and one or more PTC railroads, submits a Request for Expedited Certification (REC) letter to the Associate Administrator. The REC letter must do one of the following:

(1) Reference a product safety plan (PSP) recognized or approved by FRA under subpart H of this part and include a document fulfilling the requirements under §§ 236.1011 and 236.1013 not already included in the PSP;

(2) Attest that the PTC system has been approved by FRA and in operation for at least 5 years and has already received an assessment of Verification and Validation from an independent third party under part 236 or a waiver supporting such operation; or

(3) Attest that the PTC railroad has implemented and is operating a PTC system required by a FRA order issued prior to [insert effective date of final rule].

(b) If a REC letter conforms to paragraph (a)(1) of this section, the Associate Administrator, at his or her sole discretion, may also issue a new Type Approval for the PTC system.

(c) In order to receive a Type Approval or PTC System Certification under paragraph (a) or (b) of this section, the PTC system must be shown to reliably execute the functionalities required by §§ 236.1005 and 236.1007 and otherwise conform to this subpart.

(d) Previous approval or recognition of a train control system, together with an established service history, may, at the request of the PTC railroad, and consistent with available safety data, be credited toward satisfaction of the safety case requirements set forth in this part for the PTCSP with respect to all functionalities and implementations contemplated by the approval or recognition.

(e) To the extent that the PTC system proposed for implementation under this subpart is different in significant detail from the system previously approved or recognized, the changes shall be fully analyzed in the PTCDP or PTCSP as would be the case absent prior approval or recognition.

(f) As used in this section—

(1) *Approved* refers to approval of a Product Safety Plan under subpart H of this part.

(2) *Recognized* refers to official action permitting a system to be implemented for control of train operations under an order or waiver, after review of safety case documentation for the implementation.

(g) Upon receipt of a REC, FRA will consider all safety case information to the extent feasible and appropriate, given the specific facts before the agency. Nothing in this section limits re-use of any applicable safety case information by a party other than the party receiving:

(1) A prior approval or recognition referred to in this section; or

(2) A Type Approval or PTC System Certification under this subpart.

§ 236.1033 Communications and security requirements.

(a) All wireless communications between the office, wayside, and onboard components in a PTC system shall provide cryptographic message integrity and authentication.

(b) Cryptographic keys required under paragraph (a) shall:

(1) Use an algorithm approved by the National Institute of Standards (NIST) or a similarly recognized and FRA approved standards body;

(2) Be distributed using manual or automated methods, or a combination of both; and

(3) Be revoked:

(i) If compromised by unauthorized disclosure of the cleartext key; or

(ii) When the key algorithm reaches its lifespan as defined by the standards body responsible for approval of the algorithm.

(c) The cleartext form of the cryptographic keys shall be protected from unauthorized disclosure, modification, or substitution, except during key entry when the cleartext keys and key components may be temporarily displayed to allow visual verification. When encrypted keys or key components are entered, the cryptographically protected cleartext key or key components shall not be displayed.

(d) Access to cleartext keys shall be protected by a tamper resistant mechanism.

(e) Each railroad electing to also provide cryptographic message confidentiality shall:

(1) Comply with the same requirements for message integrity and authentication under this section; and

(2) Only use keys meeting or exceeding the security strength required to protect the data as defined in the railroad's PTCSP and required under § 236.1017(a)(8).

(f) Each railroad, or its vendor, shall have a prioritized service restoration and mitigation plan for scheduled and unscheduled interruptions of service. This plan shall be included in the PTCDP or PTCSP as required by §§ 236.1013 or 236.1015, as applicable, and made available to FRA upon request, without undue delay, for restoration of communication services that support PTC system services.

(g) Each railroad may elect to impose more restrictive requirements than those in this section, consistent with interoperability requirements specified in the PTCSP for the system.

§ 236.1035 Field testing requirements.

(a) Before any field testing of an uncertified PTC system, or a product of an uncertified PTC system, or any regression testing of a certified PTC system is conducted on the general rail system, the railroad requesting the testing must provide:

(1) A complete description of the PTC system;

(2) An operational concepts document;

(3) A complete description of the specific test procedures, including the measures that will be taken to protect trains and on-track equipment;

(4) An analysis of the applicability of the requirements of subparts A–G of this part to the PTC system that will not apply during testing;

(5) The date the proposed testing shall begin;

(6) The test locations; and

(7) The effect on the current method of the PTC system under test operation.

(b) FRA may impose additional testing conditions that it believes may be necessary for the safety of train operations.

(c) Relief from regulations other than from subparts A–G of this part that the railroad believes are necessary to support the field testing, must be requested in accordance with part 211 of this title.

§ 236.1037 Records retention.

(a) Each railroad with a PTC system required to be installed under this subpart shall maintain at a designated office on the railroad:

(1) A current copy of each FRA approved Type Approval, if any, PTCDP, and PTCSP that it holds;

(2) Adequate documentation to demonstrate that the PTCSP and PTCDP meet the safety requirements of this subpart, including the risk assessment;

(3) An Operations and Maintenance Manual, pursuant to § 236.1039; and

(4) Training and testing records pursuant to § 236.1043(b).

(b) Results of inspections and tests specified in the PTCSP and PTCDP must be recorded pursuant to § 236.110.

(c) Each contractor providing services relating to the testing, maintenance, or

operation of a PTC system required to be installed under this subpart shall maintain at a designated office training records required under § 236.1039(b).

(d) After the PTC system is placed in service, the railroad shall maintain a database of all safety-relevant hazards as set forth in the PTCSP and PTCDP and those that had not been previously identified in either document. If the frequency of the safety-relevant hazards exceeds the threshold set forth in either of these documents, then the railroad shall:

(1) Report the inconsistency in writing by mail, facsimile, e-mail, or hand delivery to the Director, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590, within 15 days of discovery. Documents that are hand delivered must not be enclosed in an envelope;

(2) Take prompt countermeasures to reduce the frequency of each safety-relevant hazard to below the threshold set forth in the PTCSP and PTCDP; and

(3) Provide a final report when the inconsistency is resolved to the FRA Director, Office of Safety Assurance and Compliance, on the results of the analysis and countermeasures taken to reduce the frequency of the safety-relevant hazard(s) below the threshold set forth in the PTCSP and PTCDP.

§ 236.1039 Operations and Maintenance Manual.

(a) The railroad shall catalog and maintain all documents as specified in the PTCDP and PTCSP for the installation, maintenance, repair, modification, inspection, and testing of the PTC system and have them in one Operations and Maintenance Manual, readily available to persons required to perform such tasks and for inspection by FRA and FRA-certified State inspectors.

(b) Plans required for proper maintenance, repair, inspection, and testing of safety-critical PTC systems must be adequate in detail and must be made available for inspection by FRA and FRA-certified State inspectors where such PTC systems are deployed or maintained. They must identify all software versions, revisions, and revision dates. Plans must be legible and correct.

(c) Hardware, software, and firmware revisions must be documented in the Operations and Maintenance Manual according to the railroad's configuration management control plan and any additional configuration/revision control measures specified in the PTCDP and PTCSP.

(d) Safety-critical components, including spare equipment, must be positively identified, handled, replaced, and repaired in accordance with the procedures specified in the PTCDP and PTCSP.

(e) Each railroad shall designate in its Operations and Maintenance Manual an appropriate railroad officer responsible for issues relating to scheduled interruptions of service contemplated by § 236.1029.

§ 236.1041 Training and qualification program, general.

(a) *Training program for PTC personnel.* Employers shall establish and implement training and qualification programs for PTC systems subject to this subpart. These programs must meet the minimum requirements set forth in the PTCDP and PTCSP in §§ 236.1039 through 236.1045 as appropriate, for the following personnel:

(1) Persons whose duties include installing, maintaining, repairing, modifying, inspecting, and testing safety-critical elements of the railroad's PTC systems, including central office, wayside, or onboard subsystems;

(2) Persons who dispatch train operations (issue or communicate any mandatory directive that is executed or enforced, or is intended to be executed or enforced, by a train control system subject to this subpart);

(3) Persons who operate trains or serve as a train or engine crew member subject to instruction and testing under part 217 of this chapter, on a train operating in territory where a train control system subject to this subpart is in use;

(4) Roadway workers whose duties require them to know and understand how a train control system affects their safety and how to avoid interfering with its proper functioning; and

(5) The direct supervisors of persons listed in paragraphs (a)(1) through (a)(4) of this section.

(b) *Competencies.* The employer's program must provide training for persons who perform the functions described in paragraph (a) of this section to ensure that they have the necessary knowledge and skills to effectively complete their duties related to operation and maintenance of the PTC system.

§ 236.1043 Task analysis and basic requirements.

(a) *Training structure and delivery.* As part of the program required by § 236.1041, the employer shall, at a minimum:

(1) Identify the specific goals of the training program with regard to the target population (craft, experience level, scope of work, *etc.*), task(s), and desired success rate;

(2) Based on a formal task analysis, identify the installation, maintenance, repair, modification, inspection, testing, and operating tasks that must be performed on a railroad's PTC systems. This includes the development of failure scenarios and the actions expected under such scenarios;

(3) Develop written procedures for the performance of the tasks identified;

(4) Identify the additional knowledge, skills, and abilities above those required for basic job performance necessary to perform each task;

(5) Develop a training and evaluation curriculum that includes classroom, simulator, computer-based, hands-on, or other formally structured training designed to impart the knowledge, skills, and abilities identified as necessary to perform each task;

(6) Prior to assignment of related tasks, require all persons mentioned in § 236.1041(a) to successfully complete a training curriculum and pass an examination that covers the PTC system and appropriate rules and tasks for which they are responsible (however, such persons may perform such tasks under the direct onsite supervision of a qualified person prior to completing such training and passing the examination);

(7) Require periodic refresher training and evaluation at intervals specified in the PTCDP and PTCSP that includes classroom, simulator, computer-based, hands-on, or other formally structured training and testing, except with respect to basic skills for which proficiency is known to remain high as a result of frequent repetition of the task; and

(8) Conduct regular and periodic evaluations of the effectiveness of the training program specified in § 236.1041(a)(1) verifying the adequacy of the training material and its validity with respect to current railroads PTC systems and operations.

(b) *Training records.* Employers shall retain records which designate persons who are qualified under this section until new designations are recorded or for at least one year after such persons leave applicable service. These records shall be kept in a designated location and be available for inspection and replication by FRA and FRA-certified State inspectors.

§ 236.1045 Training specific to office control personnel.

(a) Any person responsible for issuing or communicating mandatory directives in territory where PTC systems are or

will be in use must be trained in the following areas, as applicable:

(1) Instructions concerning the interface between the computer-aided dispatching system and the train control system, with respect to the safe movement of trains and other on-track equipment;

(2) Railroad operating rules applicable to the train control system, including provision for movement and protection of roadway workers, unequipped trains, trains with failed or cut-out train control onboard systems, and other on-track equipment; and

(3) Instructions concerning control of trains and other on-track equipment in case the train control system fails, including periodic practical exercises or simulations, and operational testing under part 217 of this chapter to ensure the continued capability of the personnel to provide for safe operations under the alternative method of operation.

(b) [Reserved]

§ 236.1047 Training specific to locomotive engineers and other operating personnel.

(a) *Operating personnel.* Training provided under this subpart for any locomotive engineer or other person who participates in the operation of a train in train control territory must be defined in the PTCDP as well as the PTCSP. The following elements must be addressed:

(1) Familiarization with train control equipment onboard the locomotive and the functioning of that equipment as part of the system and in relation to other onboard systems under that person's control;

(2) Any actions required of the onboard personnel to enable, or enter data to, the system, such as consist data, and the role of that function in the safe operation of the train;

(3) Sequencing of interventions by the system, including pre-enforcement notification, enforcement notification, penalty application initiation and post-penalty application procedures;

(4) Railroad operating rules and testing (part 217) applicable to the train control system, including provisions for movement and protection of any unequipped trains, or trains with failed or cut-out train control onboard systems and other on-track equipment;

(5) Means to detect deviations from proper functioning of onboard train control equipment and instructions regarding the actions to be taken with respect to control of the train and notification of designated railroad personnel; and

(6) Information needed to prevent unintentional interference with the proper functioning of onboard train control equipment.

(b) *Locomotive engineer training.* Training required under this subpart for a locomotive engineer, together with required records, must be integrated into the program of training required by part 240 of this chapter.

(c) *Full automatic operation.* The following special requirements apply in the event a train control system is used to effect full automatic operation of the train:

(1) The PTCDP and PTCSP must identify all safety hazards to be mitigated by the locomotive engineer.

(2) The PTCDP and PTCSP must address and describe the training required with provisions for the maintenance of skills proficiency. As a minimum, the training program must:

(i) As described in § 236.1047(a)(2), develop failure scenarios which incorporate the safety hazards identified in the PTCDP and PTCSP including the return of train operations to a fully manual mode;

(ii) Provide training, consistent with § 236.1047(a), for safe train operations under all failure scenarios and identified safety hazards that affect train operations;

(iii) Provide training, consistent with § 236.1047(a), for safe train operations under manual control; and

(iv) Consistent with § 236.1047(a), ensure maintenance of manual train operating skills by requiring manual starting and stopping of the train for an appropriate number of trips and by one or more of the following methods:

(A) Manual operation of a train for a 4-hour work period;

(B) Simulated manual operation of a train for a minimum of 4 hours in a Type I simulator as required; or

(C) Other means as determined following consultation between the railroad and designated representatives of the affected employees and approved by FRA. The PTCDP and PTCSP must designate the appropriate frequency when manual operation, starting, and stopping must be conducted, and the appropriate frequency of simulated manual operation.

(d) *Conductor training.* Training required under this subpart for a conductor, together with required records, must be integrated into the program of training required under this chapter.

§ 236.1049 Training specific to roadway workers.

(a) *Roadway worker training.* Training required under this subpart for a roadway worker must be integrated into the program of instruction required under part 214, subpart C of this chapter (''Roadway Worker Protection''), consistent with task analysis requirements of § 236.1039. This training must provide instruction for roadway workers who provide protection for themselves or roadway work groups.

(b) *Training subject areas.* (1) Instruction for roadway workers must ensure an understanding of the role of processor-based signal and train control equipment in establishing protection for roadway workers and their equipment.

(2) Instruction for all roadway workers working in territories where PTC is required under this subpart must ensure recognition of processor-based signal and train control equipment on the wayside and an understanding of how to avoid interference with its proper functioning.

(3) Instructions concerning the recognition of system failures and the provision of alternative methods of on-track safety in case the train control system fails, including periodic practical exercises or simulations and operational testing under part 217 of this chapter to ensure the continued capability of roadway workers to be free from the danger of being struck by a moving train or other on-track equipment.

11. Revise Appendix B to part 236 to read as follows:

Appendix B to Part 236—Risk Assessment Criteria

The safety-critical performance of each product for which risk assessment is required under this part must be assessed in accordance with the following minimum criteria or other criteria if demonstrated to the Associate Administrator for Safety to be equally suitable:

(a) *How are risk metrics to be expressed?* The risk metric for the proposed product must describe with a high degree of confidence the accumulated risk of a train control system that operates over the designated life-cycle of the product. Each risk metric for the proposed product must be expressed with an upper bound, as estimated with a sensitivity analysis, and the risk value selected must be demonstrated to have a high degree of confidence.

(b) *How does the risk assessment handle interaction risks for interconnected subsystems/components?* The risk assessment of each safety-critical system (product) must account not only for the risks associated with each subsystem or component, but also for the risks associated with interactions (interfaces) between such subsystems.

(c) *What is the main principle in computing risk for the previous and current conditions?* The risk for the previous condition must be computed using the same metrics as for the new system being proposed. A full risk assessment must

consider the entire railroad environment where the product is being applied, and show all aspects of the previous condition that are affected by the installation of the product, considering all faults, operating errors, exposure scenarios, and consequences that are related as described in this part. For the full risk assessment, the total societal cost of the potential numbers of accidents assessed for both previous and new system conditions must be computed for comparison. An abbreviated risk assessment must, as a minimum, clearly compute the MTTHE for all of the hazardous events identified for both previous and current conditions. The comparison between MTTHE for both conditions is to determine whether the product implementation meets the safety criteria as required by Subpart H or Subpart I as applicable.

(d) *What major system characteristics must be included when relevant to risk assessment?* Each risk calculation must consider the total signaling and train control system and method of operation, as subjected to a list of hazards to be mitigated by the signaling and train control system. The methodology requirements must include the following major characteristics, when they are relevant to the product being considered:

(1) Track plan infrastructure, switches, rail crossings at grade and highway-rail grade crossings as applicable;

(2) Train movement density for freight, work, and passenger trains where applicable and computed over a time span of not less than 12 months;

(3) Train movement operational rules, as enforced by the dispatcher, roadway worker/Employee in Charge, and train crew behaviors;

(4) Wayside subsystems and components;

(5) Onboard subsystems and components;

(6) Consist contents such as hazardous material, oversize loads; and

(7) Operating speeds if the provisions of Part 236 cite additional requirements for certain type of train control systems to be used at such speeds for freight and passenger trains.

(e) *What other relevant parameters must be determined for the subsystems and components?* In order to derive the frequency of hazardous events (or MTTHE) applicable for a product, subsystem or component included in the risk assessment, the railroad may use various techniques, such as reliability and availability calculations for subsystems and components, Fault Tree Analysis (FTA) of the subsystems, and results of the application of safety design principles as noted in Appendix C. Such failure frequency is to be derived for both fail-safe and non-fail-safe subsystems or components. The lower bounds of the MTTF or MTBF determined from the system sensitivity analysis, which account for all necessary and well justified assumptions, may be used to represent the estimate of MTTHE for the associated non-fail-safe subsystem or component in the risk assessment.

(f) *How are processor-based subsystems/components assessed?* (1) An MTTHE value must be calculated for each processor-based subsystem or component, or both, indicating the safety-critical behavior of the integrated hardware/software subsystem or component, or both. The human factor impact must be included in the assessment, whenever applicable, to provide the integrated MTTHE value. The MTTHE calculation must consider the rates of failures caused by permanent, transient, and intermittent faults accounting for the fault coverage of the integrated hardware/software subsystem or component, phased-interval maintenance, and restoration of the detected failures.

(2) Software fault/failure analysis must be based on the proper assessment of the design and implementation of the application code, its operating/executive program, and associated device drivers, historical performance data, analytical methods and experimental safety-critical performance testing performed on the subsystem or component. The software assessment process must demonstrate through repeatable predictive results that all software defects have been identified and corrected by process with a high degree of confidence.

(g) *How are non-processor-based subsystems/components assessed?* (1) The safety-critical behavior of all non-processor-based components, which are part of a processor-based system or subsystem, must be quantified with an MTTHE metric. The MTTHE assessment methodology must consider failures caused by permanent, transient, and intermittent faults, phase-interval maintenance and restoration of operation after failures and the effect of fault coverage of each non-processor-based subsystem or component.

(2) MTTHE compliance verification and validation must be based on the assessment of the design for adequacy by a documented verification and validation process, historical performance data, analytical methods and experimental safety-critical performance testing performed on the subsystem or component. The non-processor-based quantification compliance must be demonstrated to have a high degree of confidence.

(h) *What assumptions must be documented for risk assessment?* (1) The railroad shall document any assumptions regarding the derivation of risk metrics used. For example, for the full risk assessment, all assumptions made about each value of the parameters used in the calculation of total cost of accidents should be documented. For abbreviated risk assessment, all assumptions made for MTTHE derivation using existing reliability and availability data on the current system components should be documented. The railroad shall document these assumptions in such a form as to permit later automated comparisons with in-service experience.

(2) The railroad shall document any assumptions regarding human performance. The documentation shall be in such a form as to facilitate later comparisons with in-service experience.

(3) The railroad shall document any assumptions regarding software defects. These assumptions shall be in a form which permits the railroad to project the likelihood of detecting an in-service software defect. These assumptions shall be documented in such a form as to permit later automated comparisons with in-service experience.

(4) The railroad shall document all of the identified safety-critical fault paths to a mishap as predicted by the safety analysis methodology. The documentation shall be in such a form as to facilitate later comparisons with in-service faults.

12. Revise Appendix C to read as follows:

Appendix C to Part 236—Safety Assurance Criteria and Processes

(a) *What is the purpose of this appendix?* This appendix provides safety criteria and processes that the designer must use to develop and validate the product that meets safety requirements of this part. FRA uses the criteria and processes set forth in this appendix to evaluate the validity of safety targets and the results of system safety analyses provided in the RSPP, PSP, PTCIP, PTCDP, and PTCSP documents as appropriate. An analysis performed under this appendix must:

(1) Address each of the safety principles of paragraph (b) of this appendix, or explain why they are not relevant, and

(2) Employ a validation and verification process pursuant to paragraph (c) of this appendix.

(b) *What safety principles must be followed during product development?* The designer shall address each of the following safety considerations principles when designing and demonstrating the safety of products covered by subpart H or I of this part. In the event that any of these principles are not followed, the PSP or PTCDP or PTCSP shall state both the reason(s) for departure and the alternative(s) utilized to mitigate or eliminate the hazards associated with the design principle not followed.

(1) *System safety under normal operating conditions.* The system (all its elements including hardware and software) must be designed to assure safe operation with no hazardous events under normal anticipated operating conditions with proper inputs and within the expected range of environmental conditions. All safety-critical functions must be performed properly under these normal conditions. Absence of specific operator actions or procedures will not prevent the system from operating safely. The designer must identify and categorize all hazards that may lead to unsafe system operation. Hazards categorized as unacceptable or undesirable, which is determined by hazard analysis, must be eliminated by design. Those undesirable hazards that cannot be eliminated should be mitigated to the acceptable level as required by this part.

(2) *System safety under failures.*

(i) It must be shown how the product is designed to eliminate or mitigate or eliminate unsafe systematic failures—those conditions which can be attributed to human error that could occur at various stages throughout product development. This includes unsafe errors in the software due to human error in the software specification, design or coding phases, or both; human errors that could impact hardware design; unsafe conditions that could occur because of an improperly designed human-machine interface; installation and maintenance errors; and errors associated with making modifications.

(ii) The product must be shown to operate safely under conditions of random hardware failure. This includes single as well as multiple hardware failures, particularly in instances where one or more failures could occur, remain undetected (latent) and react in combination with a subsequent failure at a later time to cause an unsafe operating situation. In instances involving a latent failure, a subsequent failure is similar to there being a single failure. In the event of a transient failure, and if so designed, the system should restart itself if it is safe to do so. Frequency of attempted restarts must be considered in the hazard analysis required by § 236.907(a)(8).

(iii) There shall be no single point failures in the product that can result in hazards categorized as unacceptable or undesirable. Occurrence of credible single point failures that can result in hazards must be detected and the product must achieve a known safe state before falsely activating any physical appliance.

(iv) If one non-self-revealing failure combined with a second failure can cause a hazard that is categorized as unacceptable or undesirable, then the second failure must be detected and the product must achieve a known safe state before falsely activating any physical appliance.

(v) Another concern of multiple failures involves common mode failures in which two or more subsystems or components intended to compensate one another to perform the same function all fail by the same mode and result in unsafe conditions. This is of particular concern in instances in which two or more elements (hardware or software, or both) are used in combination to ensure safety. If a common mode failure exists, then any analysis performed under this appendix cannot rely on the assumption that failures are independent. Examples include: The use of redundancy in which two or more elements perform a given function in parallel and when one (hardware or software) element checks/monitors another element (of hardware or software) to help ensure its safe operation. Common mode failure relates to independence, which must be ensured in these instances. When dealing with the effects of hardware failure, the designer shall address the effects of the failure not only on other hardware, but also on the execution of the software, since hardware failures can greatly affect how the software operates.

(3) *Closed loop principle.* System design adhering to the closed loop principle requires that all conditions necessary for the existence of any permissive state or action be verified to be present before the permissive state or action can be initiated. Likewise the requisite conditions shall be verified to be continuously present for the permissive state or action to be maintained. This is in contrast to allowing a permissive state or action to be initiated or maintained in the absence of detected failures. In addition, closed loop design requires that failure to perform a logical operation, or absence of a logical input, output or decision shall not cause an unsafe condition, *i.e.,* system safety does not depend upon the occurrence of an action or logical decision.

(4) *Safety assurance concepts.* The product design must include one or more of the following Safety Assurance Concepts as described in IEEE–1483 standard to ensure that failures are detected and the product is placed in a safe state. One or more different principles may be applied to each individual subsystem or component, depending on the safety design objectives of that part of the product.

(i) *Design diversity and self-checking concept.* This concept requires that all critical functions be performed in diverse ways, using diverse software operations and/or diverse hardware channels, and that critical hardware be tested with Self-Checking routines. Permissive outputs are allowed only if the results of the diverse operations correspond, and the Self-Checking process reveals no failures in either execution of software or in any monitored input or output hardware. If the diverse operations do not agree or if the checking reveals critical failures, safety-critical functions and outputs must default to a known safe state.

(ii) *Checked redundancy concept.* The Checked Redundancy concept requires implementation of two or more identical, independent hardware units, each executing identical software and performing identical functions. A means is to be provided to periodically compare vital parameters and results of the independent redundant units, requiring agreement of all compared parameters to assert or maintain a permissive output. If the units do not agree, safety-critical functions and outputs must default to a known safe state.

(iii) *N-version programming concept.* This concept requires a processor-based product to use at least two software programs performing identical functions and executing concurrently in a cycle. The software programs must be written by independent teams, using different tools. The multiple independently written software programs comprise a redundant system, and may be executed either on separate hardware units (which may or may not be identical) or within one hardware unit. A means is to be provided to compare the results and output states of the multiple redundant software systems. If the system results do not agree, then the safety-critical functions and outputs must default to a known safe state.

(iv) *Numerical assurance concept.* This concept requires that the state of each vital parameter of the product or system be uniquely represented by a large encoded numerical value, such that permissive results are calculated by pseudo-randomly combining the representative numerical values of each of the critical constituent parameters of a permissive decision. Vital algorithms must be entirely represented by data structures containing numerical values with verified characteristics, and no vital decisions are to be made in the executing software, only by the numerical representations themselves. In the event of critical failures, the safety-critical functions and outputs must default to a known safe state.

(v) *Intrinsic fail-safe design concept.* Intrinsically fail-safe hardware circuits or systems are those that employ discrete mechanical and/or electrical components. The fail-safe operation for a product or subsystem designed using this principle concept requires a verification that the effect of every relevant failure mode of each component, and relevant combinations of component failure modes, be considered, analyzed, and documented. This is typically performed by a comprehensive failure modes and effects analysis (FMEA) which must show no residual unmitigated failures. In the event of critical failures, the safety-critical functions and outputs must default to a known safe state.

(5) *Human factor engineering principle.* The product design must sufficiently incorporate human factors engineering that is appropriate to the complexity of the product; the educational, mental, and physical capabilities of the intended operators and maintainers; the degree of required human interaction with the component; and the environment in which the product will be used.

(6) *System safety under external influences.* The product must be shown to operate safely when subjected to different external influences, including:

(i) Electrical influences such as power supply anomalies/transients, abnormal/improper input conditions (*e.g.,* outside of normal range inputs relative to amplitude and frequency, unusual combinations of inputs) including those related to a human operator, and others such as electromagnetic interference or electrostatic discharges, or both;

(ii) Mechanical influences such as vibration and shock; and

(iii) Climatic conditions such as temperature and humidity.

(7) *System safety after modifications.* Safety must be ensured following modifications to the hardware or software, or both. All or some of the concerns identified in this paragraph may be applicable depending upon the nature and extent of the modifications. Such modifications must follow all of the concept, design, implementation and test processes and principles as documented in the PSP for the original product. Regression testing must be comprehensive and documented to include all scenarios which are affected by the change made, and the operating modes of the changed product during normal and failure state (fallback) operation.

(c) *What standards are acceptable for verification and validation?* (1) The standards employed for verification or validation, or both, of products subject to this subpart must be sufficient to support achievement of the applicable requirements of subpart H and subpart I of this part.

(2) U.S. Department of Defense Military Standard (MIL–STD) 882C, ''System Safety Program Requirements'' (January 19, 1993), is recognized as providing appropriate risk analysis processes for incorporation into verification and validation standards.

(3) The following standards designed for application to processor-based signal and train control systems are recognized as acceptable with respect to applicable elements of safety analysis required by subpart H and subpart I of this part. The latest versions of the standards listed below should be used unless otherwise provided.

(i) IEEE standards as follows:

(A) IEEE 1483–2000, Standard for the Verification of Vital Functions in Processor-Based Systems Used in Rail Transit Control.

(B) IEEE 1474.2–2003, Standard for user interface requirements in communications based train control (CBTC) systems.

(C) IEEE 1474.1–2004, Standard for Communications-Based Train Control (CBTC) Performance and Functional Requirements.

(ii) CENELEC Standards as follows:

(A) EN50129: 2003, Railway Applications: Communications, Signaling, and Processing Systems-Safety Related Electronic Systems for Signaling; and

(B) EN50155:2001/A1:2002, Railway Applications: Electronic Equipment Used in Rolling Stock.

(iii) ATCS Specification 200 Communications Systems Architecture.

(iv) ATCS Specification 250 Message Formats.

(v) AREMA 2009 Communications and Signal Manual of Recommended Practices, Part 16, Part 17, 21, and 23.

(vi) Safety of High Speed Ground Transportation Systems. Analytical Methodology for Safety Validation of Computer Controlled Subsystems. Volume II: Development of a Safety Validation Methodology. Final Report September 1995. Author: Jonathan F. Luedeke, Battelle. DOT/FRA/ORD–95/10.2.

(vii) IEC 61508 (International Electrotechnical Commission), Functional Safety of Electrical/Electronic/Programmable/Electronic Safety (E/E/P/ES) Related Systems, Parts 1–7 as follows:

(A) IEC 61508–1 (1998–12) Part 1: General requirements and IEC 61508–1 Corr. (1999–05) Corrigendum 1–Part 1: General Requirements.

(B) IEC 61508–2 (2000–05) Part 2: Requirements for electrical/electronic/programmable electronic safety-related systems.

(C) IEC 61508–3 (1998–12) Part 3: Software requirements and IEC 61508–3 Corr.1 (1999–04) Corrigendum 1–Part3: Software requirements.

(D) IEC 61508–4 (1998–12) Part 4: Definitions and abbreviations and IEC 61508–4 Corr.1 (1999–04) Corrigendum 1–Part 4: Definitions and abbreviations.

(E) IEC 61508–5 (1998–12) Part 5: Examples of methods for the determination of safety integrity levels and IEC 61508–5 Corr.1 (1999–04) Corrigendum 1 Part 5: Examples of methods for determination of safety integrity levels.

(F) IEC 61508–6 (2000–04) Part 6: Guidelines on the applications of IEC 61508–2 and –3.

(G) IEC 61508–7 (2000–03) Part 7: Overview of techniques and measures.

(H) IEC62278: 2002, Railway Applications: Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS);

(I) IEC62279: 2002 Railway Applications: Software for Railway Control and Protection Systems;

(4) Use of unpublished standards, including proprietary standards, is authorized to the extent that such standards are shown to achieve the requirements of this part. However, any such standards shall be available for inspection and replication by FRA and for public examination in any public proceeding before the FRA to which they are relevant.

13. A new Appendix F to part 236 is added to read as follows:

Appendix F to Part 236—Requirements of Mandatory Independent Third-Party Assessment of PTC System Safety Verification and Validation

(a) This appendix provides minimum requirements for mandatory independent third-party assessment of PTC system safety verification and validation pursuant to subpart H or I of this part. The goal of this assessment is to provide an independent evaluation of the PTC system manufacturer's utilization of safety design practices during the PTC system's development and testing phases, as required by the applicable PSP, PTCDP, and PTCSP, the applicable requirements of subpart H or I of this part, and any other previously agreed-upon controlling documents or standards.

(b) The supplier may request advice and assistance of the independent third-party reviewer concerning the actions identified in paragraphs (c) through (g) of this appendix. However, the reviewer should not engage in design efforts in order to preserve the reviewer's independence and maintain the supplier's proprietary right to the PTC system.

(c) The supplier shall provide the reviewer access to any and all documentation that the reviewer requests and attendance at any design review or walkthrough that the reviewer determines as necessary to complete and accomplish the third party assessment. The reviewer may be accompanied by representatives of FRA as necessary, in FRA's judgment, for FRA to monitor the assessment.

(d) The reviewer shall evaluate with respect to safety and comment on the adequacy of the processes which the supplier applies to the design and development of the PTC system. At a minimum, the reviewer shall compare the supplier processes with acceptable methodology and employ any other such tests or comparisons if they have been agreed to previously with FRA. Based on these analyses, the reviewer shall identify and document any significant safety vulnerabilities which are not adequately mitigated by the supplier's (or user's) processes. Finally, the reviewer shall evaluate the adequacy of the railroad's applicable PSP or PTCSP, and any other documents pertinent to the PTC system being assessed.

(e) The reviewer shall analyze the Preliminary Hazard Analysis (PHA) for comprehensiveness and compliance with industry, national, or international standards.

(f) The reviewer shall analyze all Fault Tree Analyses (FTA), Failure Mode and Effects Criticality Analysis (FMECA), and other hazard analyses for completeness, correctness, and compliance with industry, national, or international standards.

(g) The reviewer shall randomly select various safety-critical software modules, as well as safety-critical hardware components if required by FRA for audit to verify whether the vendors and industry, national, or international standards were followed. The number of modules audited must be determined as a representative number sufficient to provide confidence that all unaudited modules were developed in compliance industry, national, or international standards

(h) The reviewer shall evaluate and comment on the plan for installation and test procedures of the PTC system for revenue service.

(i) The reviewer shall prepare a final report of the assessment. The report shall be submitted to the railroad prior to the commencement of installation testing and contain at least the following information:

(1) Reviewer's evaluation of the adequacy of the PSP or PTCSP including the supplier's MTTHE and risk estimates for the PTC system, and the supplier's confidence interval in these estimates;

(2) PTC system vulnerabilities, potentially hazardous failure modes, or potentially hazardous operating circumstances which the reviewer felt were not adequately identified, tracked or mitigated;

(3) A clear statement of position for all parties involved for each PTC system vulnerability cited by the reviewer;

(4) Identification of any documentation or information sought by the reviewer that was denied, incomplete, or inadequate;

(5) A listing of each applicable vendor, industry, national or international standard, process, or procedure which was not properly followed;

(6) Identification of the hardware and software verification and validation procedures for the PTC system's safety-critical applications, and the reviewer's evaluation of the adequacy of these procedures;

(7) Methods employed by PTC system manufacturer to develop safety-critical software, such as use of structured language, code checks, modularity, or other similar generally acceptable techniques; and

(8) If directed by FRA, methods employed by PTC system manufacturer to develop safety-critical hardware.

Karen J. Rae,

Deputy Administrator.

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Federal Register

Tuesday,
July 21, 2009

Part IV

Department of Homeland Security

Transportation Security Administration

49 CFR Part 1503

Revision of Enforcement Procedures; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1503

[Docket No. TSA–2009–0013]

RIN 1652–AA62

Revision of Enforcement Procedures

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule; request for comments.

SUMMARY: The Transportation Security Administration (TSA) amends its Investigative and Enforcement Procedures in this final rule to conform to the Implementing Recommendations of the 9/11 Commission Act of 2007. The rule establishes procedures by which TSA may issue civil monetary penalties for violations of any statutory requirement administered by TSA, including surface transportation requirements and Transportation Worker Identification Credentials requirements. The rule also clarifies and reorganizes TSA's investigative and enforcement procedures, and makes inflation adjustments to the maximum civil monetary penalty amounts.

DATES: *Effective Date:* This rule is effective August 20, 2009.

Comment Date: Comments must be received by September 21, 2009.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Fax 202–493–2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Sarah Tauber, Office of Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6002; telephone (571) 227–3964; facsimile (571) 227–1380; e-mail *sarah.tauber@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. TSA also invites comments relating to the economic, environmental, energy, or Federalism impacts that might result from this rulemaking action. See **ADDRESSES** above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. The public may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES,** but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and sensitive security information (SSI).[1] TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. However, if TSA determines that portions of these comments may be made publicly available, TSA may include a redacted version of the comment in the public docket. If TSA receives a request to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Homeland Security's (DHS') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://DocketInfo.dot.gov.*

You may review TSA's electronic public docket on the Internet at *http://www.regulations.gov.* In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9 a.m. to 5 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue, SE., Washington, DC 20590.

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Abbreviations and Terms Used in This Document

9/11 Act—Implementing Recommendations of the 9/11 Commission Act of 2007
ALJ—Administrative Law Judge
CPI—Consumer Price Index
FNPCP—Final Notice of Proposed Civil Penalty
FOIA—Freedom of Information Act
NPCP—Notice of Proposed Civil Penalty
OACP—Order Assessing Civil Penalty
SSI—Sensitive Security Information
TWIC—Transportation Worker Identity Credential
USCG—United States Coast Guard

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The Amendments

I. Summary of the Rulemaking

In this rule, TSA makes several changes to TSA's enforcement procedures, codified at 49 CFR part 1503. As described more fully below, this rule—

- Reorganizes and clarifies TSA's enforcement procedures and make them easier to use;
- Applies TSA's enforcement procedures to violations of surface transportation requirements and of TSA's Transportation Worker Identification Credential requirements, as provided in sections 1302 and 1304(e) of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, 121 Stat. 266, 390, Aug. 3, 2007 (9/11 Act); and
- Adjusts for inflation the maximum civil penalty amounts, in accordance with the Federal Civil Penalty Inflation Adjustment Act of 1990, Public Law 101–410 (Adjustment Act), 28 U.S.C. 2461 note.

II. Background

This rulemaking implements certain provisions of the 9/11 Act that expand TSA's civil penalty authority.[2] This section describes the relevant 9/11 Act provisions and TSA's enforcement process.

A. New Civil Penalty Authority

Section 1302(a) of the 9/11 Act applies civil penalties provisions to: (1) Any provision of title 49 U.S.C. administered by TSA, including violations of any surface transportation requirements; and (2) any violations of ch. 701 of title 46 U.S.C., which governs transportation worker identification credentials (TWIC).[3] TSA may assess a maximum penalty per case of $50,000 if the violation is committed by an individual or small business. TSA may assess a maximum penalty amount per case of $400,000 if the violation is committed by a person other than an individual or small business.[4] A Federal court may assess penalties exceeding these amounts.[5]

Prior to imposing a civil penalty, TSA must provide to the person against whom the penalty is to be imposed: (1) Written notice of the proposed penalty; and (2) the opportunity to request a hearing on the proposed penalty, if TSA receives the request not later than 30 days after the date on which the person receives notice.[6] Investigations and proceedings governing such cases must follow the requirements set forth in ch. 461 of title 49 U.S.C., which govern aviation security matters.[7]

The 9/11 Act establishes additional procedural requirements in cases involving public transportation agencies. Under section 1304(e) of the 9/11 Act, prior to imposing a civil penalty against a public transportation agency, TSA is required to give written notice of the violation and a reasonable opportunity to correct the violation or propose an alternative means of compliance acceptable to TSA. TSA may not take legal enforcement action against a public transportation agency unless TSA has provided such notice and the public transportation agency fails to correct the violation or propose

[2] Pub. L. 110–53, section 1302(a), 121 Stat. 390 (Aug. 3, 2007).

[3] Pub. L. 110–53, section 1302(a), 121 Stat. 390 (Aug. 3, 2007). TSA exercises this function under delegated authority from the Secretary.

[4] 49 U.S.C. 114(v)(3)(D).

[5] 49 U.S.C. 114(v)(3)(C).

[6] 49 U.S.C. 114(v)(3)(E).

[7] 49 U.S.C. 114(v)(5).

an alternative means of compliance acceptable to TSA within the timeframe provided in the notice.[8]

Prior to enactment of section 1302 of the 9/11 Act, TSA assessed administrative civil penalties only for violations of aviation security related statutes under 49 U.S.C. ch. 449, and 49 U.S.C. 46302 and 46303. TSA's procedures for assessing civil penalties for such violations are set forth at 49 CFR part 1503. This rule amends part 1503 to expand its application to violations of any statutory requirement administered by TSA, including surface transportation requirements and TWIC requirements, in accordance with the provisions of the 9/11 Act.

B. Summary of the Civil Penalty Process

The following is a general summary of the process TSA currently uses to assess a civil penalty for violations of the statutes, regulations, and orders it administers. The rule applies this process, with certain changes discussed below, to violations of surface transportation and TWIC requirements, to include: (1) TWIC; [9] (2) commercial drivers' licenses with hazardous material endorsements (49 CFR parts 1570 and 1572); and (3) rail transportation security (49 CFR part 1580).[10]

1. Notice of Proposed Civil Penalty

TSA initiates a civil penalty action by sending the alleged violator (the respondent) a Notice of Proposed Civil Penalty (NPCP), which states the statute, regulation, or order allegedly violated, the facts TSA believes establish the violation, and the amount of the penalty TSA proposes to impose for the violation. The NPCP also informs the respondent that he or she has 30 days from receipt to either: (1) Pay the penalty; or (2) provide information demonstrating that a violation did not occur, that the penalty should be lower because of mitigating circumstances, or that the respondent is unable to pay the proposed penalty. If the respondent does not pay the penalty, they must also request an informal conference with TSA counsel; or request a formal hearing before an Administrative Law Judge (ALJ).

Pursuant to section 1304(e) of the 9/11 Act, TSA will not send an NPCP to a public transportation agency unless TSA first gives the public transportation agency written notice of the violation and a reasonable opportunity to correct the violation, or to propose an alternative means of compliance acceptable to TSA, and the public transportation agency fails to do so within the timeframe provided in the notice.[11] Reasonableness will depend on the totality of the circumstances, including the security consequences of the violation.

2. Informal Conference

The informal conference provides the respondent with an opportunity to discuss the alleged violation informally with TSA counsel and to present exculpatory evidence. This conference can be held by telephone or in person. Many TSA enforcement cases settle as a result of information exchanged or representations made at (or after) the informal conference.

3. Order Assessing a Civil Penalty

If the respondent elects to pay the penalty, or if the matter settles (either at the informal conference or before or after the informal conference), TSA counsel issues an Order Assessing a Civil Penalty (OACP). The order states the law violated, the facts establishing the violation, the amount of the penalty, and how and by when the respondent is to pay the penalty.

4. Final Notice of Proposed Civil Penalty

In the event the respondent does not respond to the NPCP within 30 days, or in the event the respondent and TSA counsel cannot agree on a penalty amount during settlement discussions, TSA counsel issues a Final Notice of Proposed Civil Penalty (FNPCP). The FNPCP gives the respondent 15 days from receipt to: (1) Pay the penalty; (2) reach an agreed penalty amount with TSA counsel; or (3) request a formal hearing before an ALJ. Under the current regulations, the FNPCP also states that if the respondent does not respond to the FNPCP within 15 days, or if the matter has not settled and the respondent has not requested a formal hearing within 15 days, TSA counsel will issue an OACP in the penalty amount proposed by the FNPCP. One of the changes this rule makes is to have the FNCP automatically convert to an OACP, if within 15 days the respondent has not responded to the FNPCP, settled the case, or requested a formal hearing.

5. Formal Hearing

A respondent must request a formal hearing in writing within 30 days of receipt of the NPCP, or within 15 days of receipt an FNPCP. The respondent must send the request for a formal hearing to the Enforcement Docket Clerk and a copy of the request for a formal hearing to the TSA counsel.

An Administrative Law Judge (ALJ) conducts the formal hearing. The procedural rules governing formal hearings are set forth at 49 CFR part 1503, subpart G. Within 20 days of receipt of a timely request for hearing, TSA counsel will file a Complaint reciting the allegations in the NPCP or FNPCP, as applicable. The respondent must file a written Answer to the Complaint within 30 days of receipt.

The matter proceeds to a formal hearing unless the ALJ grants a motion to dismiss or a motion for a decision (or unless the case settles). At the formal hearing, both parties have the opportunity to present witnesses and other evidence. The ALJ will issue an Initial Decision at the close of a hearing or shortly thereafter.

6. Appeal From the ALJ Initial Decision

Either party may appeal the ALJ Initial Decision to the TSA Decision Maker. The TSA Decision Maker is the Assistant Secretary of Homeland Security (Transportation Security Administration) or his or her designee. The party appealing the decision must file a written Notice of Appeal with the Enforcement Docketing Center within 10 days of receipt of the Initial Decision and must also file an appeal brief with the Docketing Center within 50 days of receipt of the Initial Decision. Reply briefs may be filed up to 35 days after receipt of the appeal brief. The address of the Docketing Center is: Docketing Center, U.S. Coast Guard, 40 S. Gay Street, Room 412, Baltimore, MD 21202–4022, Attn: Enforcement Docket Clerk.

After receipt of the appeal brief (and any reply brief), the TSA Decision Maker will render a Final Decision and Order. A party may request the TSA Decision Maker to reconsider a Final Decision and Order by filing a Petition for Reconsideration within 30 days of the Final Decision.

7. Appeal From the TSA Decision Maker's Final Decision and Order

Either party may appeal a Final Decision of the TSA Decision Maker to an appropriate U.S. Circuit Court of Appeals within 60 days after the Final Order has been served on the party.

[8] See Pub. L. 110–53, section 1304(e)(2), 121 Stat. 393.

[9] TWIC is a joint program with the United States Coast Guard. TSA enforces its regulatory program at 49 CFR parts 1570 and 1572, and the Coast Guard enforces its regulations at 33 CFR parts 101–106.

[10] See Rail Transportation Security; final rule, 73 FR 72130 (Nov. 26, 2008).

[11] See Pub. L. 110–53, section 1304(e)(2), 121 Stat. 393.

III. Reorganization Summary

This rule reorganizes part 1503 and clarifies its provisions without substantive change. TSA intends, in the recodification of these regulations, to conform to the understood policy, intent, and purpose of the original regulations, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections. The reorganization is illustrated in the accompanying redistribution table in Table 1 that follows.

TABLE 1—REDISTRIBUTION OF 49 CFR PART 1503

Former section	New section	New title
1503.1	1503.201	Reports of violations.
1503.3	1503.203	Investigations.
1503.5	1503.801	Formal complaints.
1503.7	1503.205	Records, documents, and reports.
1503.11	1503.301	Warning notices and letters of correction.
1503.12	1503.415	Request for portions of the enforcement investigative report (EIR).
1503.13	1503.423	Consent orders.
1503.15	1503.701	Applicability of this subpart.
	1503.703	Civil penalty letter; referral.
1503.16	1503.401	Maximum penalty amounts; jurisdiction.
	1503.403	Delegation of authority.
	1503.413	Notice of Proposed Civil Penalty.
	1503.417	Final Notice of Proposed Civil Penalty and Order.
	1503.419	Order Assessing Civil Penalty.
	1503.425	Compromise orders.
	1503.427	Request for a formal hearing.
	1503.657(a)	Appeal from initial decision.
1503.21	1503.407	Military personnel.
1503.25	1503.405	Injunctions.
1503.29	1503.421	Streamlined civil penalty procedures for certain security violations.
	1503.419	Order Assessing Civil Penalty.
1503.201	1503.601	Applicability.
1503.202	1503.103	Terms used in this part.
1503.203	1503.603	Separation of functions.
1503.204	1503.605	Appearances and rights of parties.
	1503.651	Record.
1503.205	1503.607	Administrative law judges.
1503.206	1503.619	Intervention.
1503.207	1503.431	Certification of documents.
1503.208	1503.609	Complaint.
1503.209	1503.409	Service of documents.
	1503.429	Filing of documents with the Enforcement Docket Clerk.
	1503.611	Answer.
1503.210	1503.429	Filing of documents with the Enforcement Docket Clerk.
1503.211	1503.409	Service of documents.
1503.212	1503.411	Computation of time.
1503.213	1503.617	Extension of time.
1503.214	1503.621	Amendment of pleadings.
1503.215	1503.623	Withdrawal of complaint or request for hearing.
1503.216	1503.625	Waivers.
1503.217	1503.627	Joint procedural and discovery schedule.
1503.218	1503.629	Motions.
1503.219	1503.631	Interlocutory appeals.
1503.220	1503.633	Discovery.
1503.221	1503.615	Notice of hearing.
1503.222	1503.635	Evidence.
1503.223	1503.637	Standard of proof.
1503.224	1503.639	Burden of proof.
1503.225	1503.641	Offer of proof.
1503.226	1503.643	Public disclosure of evidence.
1503.227	1503.645	Expert or opinion witnesses.
1503.228	1503.647	Subpoenas.
1503.229	1503.649	Witness fees.
1503.230	1503.651	Record.
1503.231	1503.653	Argument before the ALJ.
1503.232	1503.655	Initial decision.
1503.233	1503.655(d)	Effect of initial decision.
	1503.657	Appeal from initial decision.
1503.234	1503.659	Petition to reconsider or modify a final decision and order of the TSA decision maker on appeal.
1503.235	1503.661	Judicial review of a final order.
1503.301	1503.901	Scope and purpose.

TABLE 1—REDISTRIBUTION OF 49 CFR PART 1503—Continued

Former section	New section	New title
1503.303	1503.903	Definitions.
1503.305	1503.401	Maximum penalty amounts.

IV. Section-by-Section Analysis

TSA makes amendments and corrections as will remove ambiguities, contradictions, and other imperfections in the provisions of part 1503 discussed below. The changes begin with subpart B. Subpart A is reserved. Sections of the rule that were reorganized without change are not discussed in this preamble.

A. Subpart B—Scope of Investigative and Enforcement Procedures

1. TSA Requirements (§ 1503.101)

For purposes of this part, TSA adopts the term ''TSA requirements'' to refer to the universe of statutory, regulatory, and other legal requirements, the violation of which could give rise to TSA enforcement. Accordingly, the revised part 1503 applies to enforcement actions for violations of any TSA surface transportation requirement under title 49 U.S.C. and the TWIC requirements TSA has issued under 46 U.S.C. ch. 701.

2. Terms Used in This Part (§ 1503.103)

Section 1503.103 removes the definition of ''complainant'' because it is no longer used in the revised part 1503. The definitions of ''complaint'' and ''order assessing civil penalty'' are removed because they are defined in the specific sections where they are used. Section 1503.103 adds a definition of ''enforcement investigative report (EIR)'', which appears in the current part 1503, but is not defined.

This rule amends the definition of ''mail'' by clarifying that it includes regular U.S. mail service. In addition, the rule deletes reference to overnight express courier service in the definition of ''mail.'' Overnight express courier service is more appropriately covered under the current definition of ''personal delivery,'' which includes ''use of a contract or express messenger service.'' Accordingly, the definition of ''personal delivery'' is amended to include reference to an overnight express courier service.

The rule amends the definition of ''pleading'' to include not only a complaint, answer, and amendment to the complaint or answer, but also any other written submission to the ALJ or a party during the course of the hearing proceedings.

The rule codifies the statutory definition of ''public transportation agency'' as a publicly owned operator of public transportation eligible to receive Federal assistance under 49 U.S.C. ch. 53.[12]

Under the current part 1503, the term ''respondent'' is defined as ''a person, corporation, or company named in a complaint.'' This rule amends this definition to be ''the person named in a Notice of Proposed Civil Penalty, a Final Notice of Proposed Civil Penalty and Order, or a complaint.'' This promotes clarity in the regulation by permitting the use of ''respondent'' to refer to the alleged violator at any stage in the enforcement process.

B. Subpart D—Non-Civil Penalty Enforcement

Subpart D (Warning Notices and Letters of Correction (§ 1503.301)) broadens the scope of these provisions making them applicable to cases involving any TSA requirement. It also codifies the provisions of section 1304(e) of the 9/11 Act requiring that: (1) TSA give written notice of a violation and a reasonable opportunity to correct the violation or propose an alternative means of compliance before taking legal enforcement action against a public transportation agency; and (2) TSA not initiate civil enforcement action for violations of administrative and procedural requirements pertaining to transportation security grant programs under Public Law 110–53.[13] In determining reasonableness under this provision, TSA will consider the totality of the circumstances.

C. Subpart E—Assessment of Civil Penalties by TSA

1. Maximum Civil Penalty Amounts (§ 1503.401)

Section 1503.401 updates the maximum civil penalty amounts for civil penalties assessed by TSA. Congress raised the maximum civil penalty amounts per violation for certain aviation security statutes. Homeland Security Act of 2002, Public Law 107–296, section 1602, 116 Stat. 2135 (Nov. 25, 2002). Congress also raised the total civil penalty amount per case that TSA may assess. Vision 100—Century of Aviation Reauthorization Act (Vision 100) (Pub. L. 108–176, sec. 503(b), 117 Stat. 2490 (Dec. 12, 2003).

Section 1503.401 also adds reference to the maximum civil penalty amounts under the 9/11 Act for violations of any statute administered by TSA. Statutes administered by TSA include both aviation security statutes and statutes authorizing or directing TSA to impose surface transportation requirements. See 49 U.S.C. ch. 449, and secs. 46302, 46303, and 46 U.S.C. ch. 701. TSA may impose penalties under these statutes for violations of any aviation or surface transportation security requirements, including violations of TSA's TWIC requirements, whether imposed by an implementing regulation or order.

Paragraph (d) adjusts the applicable maximum penalties for inflation as described below.

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410 (Adjustment Act), 28 U.S.C. 2461 note, provides for the regular evaluation of civil monetary penalties to ensure that they continue to maintain their deterrent effect and that penalty amounts due the Federal Government are properly accounted for and collected.

On April 26, 1996, the President signed into law the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134. Section 31001 of that Act, also known as the Debt Collection Improvement Act of 1996 (Improvement Act), amended the Adjustment Act to provide more effective tools for government-wide collection of delinquent debt. Section 31001(s)(1) of the Improvement Act added a new section 7 to the Adjustment Act providing that any increase in a civil monetary penalty made pursuant to this Act shall apply only to violations that occur after the date the increase takes effect. The Improvement Act provides that the adjustments for inflation required by the Adjustment Act should be made at least every four years.

The amounts of the adjustments are determined according to a detailed formula specified in the Adjustment Act, incorporating a ''cost-of-living adjustment'' that is defined in section 5(b) of the Adjustment Act as being the

[12] 9/11 Act at section 1402(5).

[13] See Pub. L. 110–53, section 1304(e), 121 Stat. 393.

percentage (if any) for each civil monetary penalty by which—

(1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds

(2) The Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Section 31001(s)(2) of the Improvement Act also provides that the first adjustment of a civil monetary penalty made pursuant to these procedures may not exceed 10 percent of the penalty. Congress reenacted the penalties in 2003. This rule, accordingly, represents the first adjustment of the civil monetary penalties after the last Congressional action.

Subpart E of this rule incorporates the provisions previously in subpart H and establishes new civil penalty maximums based on an adjustment for inflation for violations of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303.

TSA has adjusted maximum penalties as follows:

The CPI increased by 21.63 percent from June 2002 to June 2008.[14]

Based on this increase, the inflation adjusted maximum for the $10,000 civil penalty amount would be $12,163. However, the $10,000 maximum amount is adjusted to $11,000 because this is the first adjustment after Congress increased the penalties in 2003. As such, it is limited to an increase of 10 percent. The inflation adjusted maximum for the $25,000 civil penalty amount would be $30,408. However, as adjusted the amount is $27,500, 10 percent above the amount as increased by Congress in 2003. Upon the effective date of today's rule, these new civil penalty maximums become effective. The $10,000 maximum for violations of other provisions of title 49 and title 46 U.S.C. ch. 701 is not being adjusted at this time because it is a newly enacted penalty amount.

2. Delegation of Authority (§ 1503.403)

Section 1503.403 makes minor revisions to former § 1503.16(c), delegating to TSA's Chief Counsel and the Deputy Chief Counsel for Enforcement the authority to prosecute civil enforcement cases and refer them to the Attorney General, as necessary. Section 1503.403 changes the title of the Deputy Chief Counsel and makes explicit the authority of the Chief Counsel or Deputy Chief Counsel for Enforcement to negotiate lower civil penalties than those that TSA initially proposed.

3. Injunctions (§ 1503.405)

Section 1503.405 incorporates the provisions regarding the institution of injunctions currently codified in § 1503.25, and expands their scope to cover any violation of title 49 U.S.C. administered by TSA or TSA's TWIC requirements under 46 U.S.C. ch. 701.

4. Military Personnel (§ 1503.407)

The current regulation provides that the Chief Counsel or Deputy Chief Counsel for Civil Enforcement will refer such cases to the appropriate military authority for such disciplinary action, as that authority considers appropriate. Section 1503.407 of this rule expands the delegation to authorize any designated agency official to make such referrals and expands the scope of the section to encompass violations of any TSA requirement.

5. Service of Documents (§ 1503.409)

Section 1503.409 amends current § 1503.211, which governs service of documents in the context of a formal hearing. Section 1503.409 governs the service of documents at all stages of the civil enforcement process, beginning with the service of a notice of proposed civil penalty. In addition, this section, as amended, permits service to be made by electronic mail or facsimile transmission, if consented to in writing by the person served. Even in such cases, however, service by electronic mail or facsimile transmission will not be effective if the party making service obtained credible information indicating that the attempted service did not reach the person to be served. In addition, for pleadings served during the formal hearing process, the party making service must file with the Enforcement Docket Clerk a copy of the opposing party's consent to receive service by electronic mail or facsimile transmission. The date of service by electronic mail or facsimile transmission is the date of transmission. See F.R. Civ. P. 5(b)(2)(E).

6. Computation of Time (§ 1503.411)

Section 1503.411 amends current § 1503.212, which governs the computation of time for purposes of deadlines applicable in the context of the formal hearing process. Section 1503.411 expands the application of this section to time requirements at any stage of the civil enforcement process.

7. Notice of Proposed Civil Penalty (§ 1503.413)

When TSA determines that a person has violated a TSA requirement and that a civil penalty is warranted, the agency issues a Notice of Proposed Civil Penalty to the alleged violator. Section 1503.413 revises without significant change the provisions governing the issuance of Notices of Proposed Civil Penalty currently codified at § 1503.16(d) and updates the address for TSA's Enforcement Docket Clerk, which now is located at the United States Coast Guard (USCG) ALJ Docketing Center, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022.

8. Request for Portions of the Enforcement Investigative Report (EIR) (§ 1503.415)

Section 1503.415 revises slightly the provisions currently codified at § 1503.12 governing the release of limited investigative materials to the recipient of a Notice of Proposed Civil Penalty. When TSA issues a Notice of Proposed Civil Penalty, the respondent may request portions of the relevant investigative report that are not privileged (*e.g.,* under the deliberative process, attorney work-product, or attorney-client privileges). This information may contain Sensitive Security Information (SSI), which is restricted from public disclosure under 49 CFR part 1520. TSA will provide this information to the respondent for the sole purpose of preparing a response to the allegations contained in the Notice of Proposed Civil Penalty. The individual receiving SSI under this provision must comply with 49 CFR part 1520, which permits TSA to require a background check and imposes other conditions, as well as the requirements to manage the information in accordance with part 1520. Any violation of 49 CFR part 1520 by the respondent would be a violation of TSA requirements and subject to additional enforcement action.

9. Final Notice of Proposed Civil Penalty and Order (§ 1503.417)

Section 1503.417 makes one significant change in the provisions governing the issuance of Final Notices of Proposed Civil Penalty currently codified at § 1503.16(e). The change is intended to reduce the time necessary to resolve civil penalty cases.

Under the current regulation, TSA issues a Final Notice of Proposed Civil Penalty when: (1) The alleged violator fails to respond to the Notice of Proposed Civil Penalty within 30 days after receipt of that notice; or (2) the

[14] Table 24, Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. City Average, All Items.'' See *http://www.bls.gov/cpi/cpid0904.pdf.*

parties have engaged in settlement discussions but have not reached a settlement. After the Final Notice of Proposed Civil Penalty is issued, the respondent has 15 days from receipt to: (1) Pay the proposed civil penalty; (2) negotiate and pay a lesser amount; or (3) request a formal hearing. If the respondent pays the penalty or fails to exercise the other two options, TSA issues an Order Assessing Civil Penalty, which ends the enforcement process and makes the civil penalty final.

Amended § 1503.417, in conjunction with amended § 1503.419(b), shortens this process by making the Final Notice of Proposed Civil Penalty automatically convert to an Order Assessing Civil Penalty if one of the events in § 503.419(b) has occurred, eliminating the need for TSA to issue a separate Order Assessing Civil Penalty. This change will not affect the procedural rights of the alleged violator; rather, it will streamline the process and allow quicker resolution of cases, once a respondent has exercised, or failed to exercise, those procedural rights that are available. TSA currently uses this streamlined process for routine enforcement actions against individuals who bring prohibited items through airport screening checkpoints. Thus, the revision to § 1503.417 primarily affects enforcement actions against entities, such as airports and air carriers. Under § 1503.417, the Final Notice of Proposed Civil Penalty is now called a Final Notice of Civil Penalty and Order (''Final Notice and Order'').

10. Order Assessing Civil Penalty (§ 1503.419)

Section 1503.419 revises the provisions governing the issuance of Orders Assessing Civil Penalty currently codified at § 1503.16(b), with the change discussed above regarding the automatic conversion of a Final Notice and Order to an Order Assessing Civil Penalty. TSA has moved the provisions of current § 1503.16(b) regarding the status of ALJ decisions as orders assessing civil penalty to § 1503.655(c).

11. Streamlined Civil Penalty Procedures for Certain Security Violations (§ 1503.421)

Section 1503.421 reorganizes and makes minor revisions to the provisions of § 1503.29 of the current regulation, which provide for the issuance of Notices of Violation for certain types of common security violations at a passenger screening or baggage screening checkpoint. TSA issues Notices of Violation when an individual presents a weapon, explosive, or incendiary for screening at a passenger screening checkpoint or in checked baggage, and where the amount of the proposed civil penalty is less than $5,000. A Notice of Violation contains a statement of the charges, the amount of the proposed civil penalty, and an offer to settle the matter for a lesser specified penalty amount. Under the current regulation, the recipient of a Notice of Violation has the option to request an Informal Conference with an agency attorney. Under this rule, an Informal Conference with an agency attorney or another agency official, as determined by TSA, is available. This change allows TSA to increase its capacity to provide Informal Conferences and therefore resolve cases more quickly.

12. Consent Orders (§ 1503.423)

Under § 1503.13 of the current regulation, a consent order must contain: (1) An admission of all jurisdictional facts; (2) an express waiver of the right to further procedural steps and of all rights to judicial review; and (3) an incorporation of the notice of proposed civil penalty by reference and an acknowledgment that the notice may be used to construe the terms of the order.

Section 1503.423 revises slightly the provisions of this section by eliminating the reference to the notice of proposed civil penalty, thereby making the consent order a self-contained document. The consent order includes: (1) An admission of all jurisdictional facts; (2) an admission of agreed-upon allegations; (3) a statement of the law violated; (4) a finding of violation; and (5) an express waiver of the right to further procedural steps and of all rights to administrative and judicial review.

13. Compromise Orders (§ 1503.425)

Section 1503.425 incorporates and makes slight revisions to the provisions of § 1503.16(l) of the current regulation. Section 1503.425 provides explicitly that a compromise order will include all jurisdictional facts and allegations.

14. Request for a Formal Hearing (§ 1503.427)

Section 1503.427 revises slightly the provisions of § 1503.16(f) of the current regulations to make clear that the filing of a request for a formal hearing does not guarantee a person an opportunity to appear before an ALJ in person. The ALJ may issue an initial decision or dispositive order resolving the case prior to the commencement of the formal hearing.

15. Filing of Documents With the Enforcement Docket Clerk (§ 1503.429)

Section 1503.429 of this rule revises slightly the provisions of § 1503.210 to add provisions permitting the filing of documents with the Enforcement Docket Clerk by electronic mail or facsimile transmission. The amended rule also updates the address of the Enforcement Docket Clerk, which now is located at the United States Coast Guard (USCG) ALJ Docketing Center, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022. If this address changes in the future, TSA will announce the change through a notice in the **Federal Register.**

16. Certification of Documents (§ 1503.431)

Section 1503.431 of this rule revises slightly the provisions of § 1503.207 of the current regulation governing the certification of documents filed with the Enforcement Docket clerk by adding several items to the certification. One of the items to which one must certify under the current regulation at § 1503.207(b)(1) is that the document is ''[w]arranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law.'' This rule requires that a good faith and non-frivolous argument exist for extension, modification, or reversal of existing law. This rule also adds that a certification includes that the document is supported by evidence, and any denials of factual contentions are warranted on the evidence. These issues are implicit in the requirements governing certification of documents under the current regulation; this rule makes them explicit.

D. Subpart G—Rules of Practice in TSA Civil Penalty Actions

1. Applicability (§ 1503.601)

Section 1503.601 of this rule revises the provisions of § 1503.201 of the current regulation, regarding the applicability of TSA's formal hearing procedures. First, in accordance with the 9/11 Act, paragraph (a) expands the applicability of the formal hearing procedures to cases involving violations of any statutory requirement administered by TSA, including surface transportation requirements and TWIC requirements.

Second, paragraph (b) of this rule makes clear that the formal hearing procedures cannot be used to conduct an adjudication of the validity of any TSA rule or other requirement under the U.S. Constitution, the Administrative Procedure Act, or any other law. Put differently, a person may not use a

formal hearing under subpart G to challenge the legal basis of a TSA rule or other requirement, the violation of which gave rise to the issuance of a civil penalty. The purpose of the formal hearing is to adjudicate whether a violation occurred and whether the civil penalty is appropriate. See *Appeal of Rendon,* 2004 DOT Av. LEXIS 1287, at *3, (ALJ lacks authority to determine whether a TSA regulation was unconstitutional) aff'd sub nom. *Rendon* v. *Transportation Security Admin.,* 424 F.3d 475 (6th Cir. 2005).

Third, paragraph (d) of this rule adds a provision clarifying that the consolidation of two or more cases that individually are below the Federal district court jurisdictional threshold does not cause the consolidated action to exceed that threshold and thereby fall within the exclusive jurisdiction of the Federal district court. The issue of consolidation of cases is addressed further in § 1503.613.

2. Administrative Law Judges (§ 1503.607)

Section 1503.607 of this rule revises the provisions of § 1503.205 of the current rule, with the following changes. First, paragraph (a) makes explicit the following implicit powers that an ALJ holds under the current regulation: (1) To issue scheduling orders and other appropriate orders regarding discovery or other matters that come before him or her; (2) to hold conferences to settle or to simplify the issues on his or her own motion; (3) to strike unsigned documents unless omission of the signature is corrected promptly after being called to the attention of the attorney or party; and (4) to order payment of witness fees.

Second, paragraph (b) of this rule adds an express limitation on an ALJ's powers, consistent with current law. Specifically, the amended rule provides that an ALJ is not authorized to decide issues involving the validity of a TSA regulation, order, or other requirement under the U.S. Constitution, the Administrative Procedure Act, or other law. See *Appeal of Rendon,* 2004 DOT Av. LEXIS 1287, at *3, (ALJ lacks authority to determine whether a TSA regulation was unconstitutional) aff'd sub nom. *Rendon* v. *Transportation Security Admin.,* 424 F.3d 475 (6th Cir. 2005). Nor may the ALJ adopt or follow a standard of proof or procedure contrary to that set forth in TSA's formal hearing procedures.

3. Complaint (§ 1503.609)

Section 1503.609 of this rule revises slightly the provisions of § 1503.208 of the current regulation. First, § 1503.609 changes from 20 to 30 the number of days within which TSA has to file a complaint after a respondent requests a formal hearing. A 30-day period is consistent with the length of most of the other response periods allowed under TSA's enforcement procedures.

Second, § 1503.609 omits provisions on the manner of service of the complaint, because service of all documents is addressed in § 1503.409.

4. Consolidation and Separation of Cases (§ 1503.613)

This rule adds a new provision governing the consolidation and separation of cases. In addition to clarifying the process for consolidation and separation of cases, § 1503.613 makes clear that consolidation of two or more actions that individually involve amounts in controversy below the jurisdictional maximum of the administrative court will not cause the resulting action to exceed that jurisdictional maximum and thereby come under the exclusive jurisdiction of the Federal district courts, as specified in 49 U.S.C. 46301(d)(4)(A).

5. Extension of Time (§ 1503.617)

Section 1503.617 of this rule revises slightly the provisions of § 1503.213 of the current rule by adding a new provision specifically governing requests for continuances of a hearing. Paragraph (c) provides that either party may request a continuance of the date of a hearing, for good cause shown, no later than seven days before the date of the hearing. Good cause does not include a scheduling conflict involving the parties or their attorneys which by due diligence could have been foreseen. This new provision is intended to establish certainty and predictability for the parties as they prepare for a formal hearing and discourage undue delay in the proceedings.

6. Withdrawal of Complaint or Request for Hearing (§ 1503.623)

Section 1503.623 of this rule revises slightly the provision of § 1503.215 of the current regulation, which permits an agency attorney to withdraw a complaint or a respondent to withdraw a request for a hearing without the consent of the ALJ, at any time before or during a hearing. The rule now permits the ALJ to dismiss the proceedings without prejudice if the withdrawing party shows good cause for dismissal without prejudice. The current regulation requires dismissal with prejudice in all cases. This change is intended to leave open the possibility that the withdrawing party may have a bona fide reason for withdrawing and should not be automatically precluded from refiling. In addition, the amended rule permits a party to withdraw a request for hearing without prejudice at any time before a complaint has been filed. This is intended to address situations where respondents mistakenly request a hearing when they intended to ask for an informal conference or another procedural option.

7. Discovery (§ 1503.633)

Section 1503.633 of this rule incorporates the provisions in § 1503.220 of the current regulation and adds a new provision at § 1503.633(g) clarifying a party's access to Sensitive Security Information through discovery. Specifically, at the request of a party, TSA may provide SSI to the party when, in the sole discretion of TSA, access to the SSI is necessary for the party to prepare a response to allegations contained in the complaint. TSA may provide such information, subject to such restrictions on further disclosure and such safeguarding requirements as TSA determines appropriate. This new provision largely reiterates a similar provision in 49 CFR 1520.15(d) of TSA's regulation governing Sensitive Security Information. TSA repeats it here for clarity.

8. Standard of Proof (§ 1503.637)

Section 1503.637 of this rule amends the provisions of § 1503.223 of the current regulation regarding the standard of proof in a formal hearing. The current regulation states that a party must prove its case or defense by ''a preponderance of reliable, probative, and substantial evidence.'' This statement of the standard may be confusing because it refers to ''substantial evidence.'' The ''substantial evidence'' standard is a standard of judicial review applicable to an agency's finding of fact. See *American Textile Mfrs. Inst.* v. *Donovan,* 452 U.S. 490, 522 (1981). Courts have defined ''substantial evidence'' as ''such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'' *Id.* Moreover, courts have consistently held that substantial evidence ''requires more than a scintilla but less than a preponderance.'' *Id.* Thus, the substantial evidence standard and the preponderance standard differ. By using the term ''substantial evidence'' in the description of the preponderance standard, § 1503.223 of the current regulation appears to introduce confusion about the appropriate standard of proof. To eliminate any confusion, TSA has restated the standard of proof simply as

proof of a party's case or defense by a preponderance of the evidence. Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

9. Argument Before the ALJ (§ 1503.653)

Section 1503.653 of this rule revises slightly the provisions in § 1503.231 of the current regulation. Current § 1503.231(a) states that the ALJ may request written arguments during the hearing if he or she finds that submission of written arguments would be ''reasonable.'' This rule changes this standard by providing that the ALJ may request written arguments during the hearing if written argument is ''necessary to issue the ruling or order to which the argument pertains.'' The purpose of this change is simply to clarify to the parties and the ALJ what constitutes a reasonable ground to request written arguments.

10. Initial Decision (§ 1503.655)

Section 1503.655 of this rule regarding the initial decision of the ALJ revises slightly the provision of § 1503.232 of the current regulation. Paragraph (a) makes a conforming change by clarifying that the ALJ's issuance of an initial decision may follow the party's submission of written posthearing briefs.

Paragraph (b) changes the requirement as to when an initial decision must be issued and whether it must be written. Under the current regulation, the ALJ must issue the initial decision and order orally on the record at the conclusion of the hearing, unless the ALJ finds that issuing a written initial decision is reasonable. In such cases the ALJ must issue a written initial decision not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief. This rule changes this practice by making the issuance of a written initial decision mandatory in all cases. Specifically, paragraph (b) provides that, after the conclusion of the hearing, the ALJ may issue the initial decision and order orally on the record. The ALJ must issue a written initial decision and order not later than 30 days after the conclusion of the hearing or submission of the last post-hearing brief. The ALJ must serve a copy of any written initial decision on each party.

TSA has made this change to better document ALJ decisions and preserve guidance for future enforcement proceedings.

Paragraph (d) revises the provision in § 1503.233(j)(3) of the current regulation regarding the precedential value of ALJ rulings and initial decisions. That section now states that any issue, finding or conclusion, order, ruling, or initial decision of an ALJ that has not been appealed to the TSA decision maker is not precedent in any other civil penalty action. While this is correct in that such decisions are not binding in other civil penalty actions, the language of this provision appeared to preclude reliance on such prior decisions as instructive or persuasive. In the interest of promoting predictability and consistency in enforcement, it is appropriate that ALJ initial decisions be recognized as persuasive authority in subsequent civil penalty actions. Consequently, paragraph (d) revises the current regulation by providing that an initial decision of an ALJ may be considered as persuasive authority in any other civil penalty action, unless appealed and reversed by the TSA decision maker or a court of competent jurisdiction.

11. Appeal From Initial Decision (§ 1503.657)

Section 1503.657 of this rule revises the reference in paragraph (b) to the preponderance-of-the-evidence standard of proof, as discussed previously.

V. Administrative Procedure Act

The Administrative Procedure Act (APA) requires TSA to provide public notice and seek public comment on substantive regulations. 5 U.S.C. 553. The APA, however, excludes certain types of regulations and permits exceptions for other types of regulations from this public notice and comment requirement. TSA issues this rule without providing the opportunity for prior notice and comment for the reasons described below. TSA is requesting, however, and will consider, public comments submitted during the public comment period as described in the ''Comments Invited'' section.

Reorganization and clarification of 49 CFR part 1503. The Administrative Procedure Act (APA) exempts from the prior notice and opportunity for comment requirements ''rules of agency organization, procedure or practice.'' 5 U.S.C. 553(b)(A). The reorganization and clarification of part 1503 makes changes such as making it explicit that an ALJ can issue scheduling orders or hold conferences changing from 20 to 30 the number of days within which TSA must file a complaint after a respondent requests a formal hearing. Accordingly, to the extent that this rule adopts rules of agency organization, procedure or practice, those portions of the rule are excepted from the notice-and-comment requirements under 5 U.S.C. 553(b)(A).

Surface Mode Administrative Penalties. This portion of the rule would codify provisions of the 9/11 Act that bring surface mode violations within the scope of TSA's civil penalty authority. Sections 1302 and 1304(e) of the 9/11 Act consist of specific directions to TSA for assessing civil penalties for surface transportation and Transportation Worker Identification Credential violations. Prior to enactment of the 9/11 Act, TSA could assess civil penalties primarily for violations of ch. 449 of title 49 U.S.C., which relates to aviation. Accordingly, this rule would make TSA's current civil penalty enforcement procedures at 49 CFR part 1503, which now only apply to violations of ch. 449 of title 49 U.S.C. (aviation), applicable to the additional types of violations added by the 9/11 Act, such as violations of surface transportation requirements. As an application of the existing procedures to a new substantive area of regulation, the rule remains a procedural rule that may be excepted from notice and comment under 5 U.S.C. 553(a)(2). Advance notice-and-comment, moreover, is unnecessary and would not serve the public interest under 5 U.S.C. 553(b)(3)(B) because these rules already apply to all other civil penalties before TSA.

Civil Monetary Penalty Adjustment. This rule makes inflation adjustments to the maximum civil penalty amounts in accordance with the Federal Civil Penalty Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note. TSA has no discretion over the amounts of these increases. The Adjustment Act specifies an arithmetic calculation of the inflation adjustment. This rule is a nondiscretionary ministerial action to conform to the Adjustment Act. Therefore, advance public notice and an opportunity for public comment is unnecessary and not in the public interest. 5 U.S.C. 553(b)(3)(B).

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. As protection provided by the Paperwork Reduction Act, as amended, 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.

TSA has determined that there are no current or new information collection requirements associated with this rule.

VII. Economic Impact Analyses

A. Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review [15] directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act, 19 U.S.C. 2531–2533, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

B. Executive Order 12866 Assessment

In conducting these analyses, TSA has determined:

1. This rulemaking is not a ''significant regulatory action'' as defined in the Executive Order. The Office of Management and Budget agrees with this conclusion.
2. This rulemaking does not have a significant economic impact on a substantial number of small entities.
3. This rulemaking does not constitute a barrier to international trade.
4. This rulemaking does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

The bases for these conclusions are summarized below.

C. Costs and Benefits

This is a procedural rule whose costs and benefits will not significantly exceed, or be lower than, those imposed by TSA's current rule. While maximum penalty amounts have been adjusted for inflation, this change is not likely to have a significant impact because TSA does not expect to impose maximum penalties in most enforcement actions. More importantly, however, the costs of these penalties only affect those that engage in conduct prohibited by statute or related regulations. Those who comply with the law will not be affected.

D. Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that a rule will have a significant economic impact on a substantial number of small entities, the agency must prepare a regulatory flexibility analysis as described in the RFA. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. 5 U.S.C. 601(6). Individuals and States are not included in the definition of a small entity. Pursuant to 5 U.S.C. 603(a), however, the requirement to perform a regulatory flexibility analysis does not apply where, as is the case in today's rule, the agency is not required to issue a proposed rule prior to issuing a final rule.

This rule provides guidance for the parties as to how civil penalties are imposed. The rules state the procedures for investigations, enforcement actions, for TSA civil penalty actions, and other details of imposing and adjudicating civil penalties. The civil penalties implemented by this rule will only affect those that engage in conduct prohibited by statute or related regulations. Those who comply with the law will not be affected by these civil penalties. Pursuant to § 1503.401, maximum civil penalties for individuals and small businesses are lower than those for larger entities.

E. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and has determined that it will impose the same costs on domestic and international entities and thus have a neutral trade impact.

F. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

VIII. Other Analyses

A. Executive Order 13132, Federalism

TSA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. TSA has determined that this action 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, and therefore does not have Federalism implications.

B. Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and has determined that this action will not have a significant effect on the human environment.

C. Energy Impact Analysis

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). TSA has determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties, Transportation.

The Amendments

■ For the reasons set forth in the preamble, the Transportation Security Administration revises part 1503 in chapter XII of title 49, Code of Federal Regulations to read as follows:

[15] 58 FR 51735 (October 4, 1993).

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

Subpart A—[Reserved]

Subpart B—Scope of Investigative and Enforcement Procedures

Sec.
1503.101 TSA requirements.
1503.103 Terms used in this part.

Subpart C—Investigative Procedures

1503.201 Reports of violations.
1503.203 Investigations.
1503.205 Records, documents, and reports.

Subpart D—Non-Civil Penalty Enforcement

1503.301 Warning notices and letters of correction.

Subpart E—Assessment of Civil Penalties by TSA

1503.401 Maximum penalty amounts.
1503.403 Delegation of authority.
1503.405 Injunctions.
1503.407 Military personnel.
1503.409 Service of documents.
1503.411 Computation of time.
1503.413 Notice of Proposed Civil Penalty.
1503.415 Request for portions of the enforcement investigative report (EIR).
1503.417 Final Notice of Proposed Civil Penalty and Order.
1503.419 Order Assessing Civil Penalty.
1503.421 Streamlined civil penalty procedures for certain security violations.
1503.423 Consent orders.
1503.425 Compromise orders.
1503.427 Request for a formal hearing.
1503.429 Filing of documents with the Enforcement Docket Clerk.
1503.431 Certification of documents.

Subpart F—[Reserved]

Subpart G—Rules of Practice in TSA Civil Penalty Actions

1503.601 Applicability.
1503.603 Separation of functions.
1503.605 Appearances and rights of parties.
1503.607 Administrative law judges.
1503.609 Complaint.
1503.611 Answer.
1503.613 Consolidation and separation of cases.
1503.615 Notice of hearing.
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1503.621 Amendment of pleadings.
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1503.625 Waivers.
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1503.633 Discovery.
1503.635 Evidence.
1503.637 Standard of proof.
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1503.645 Expert or opinion witnesses.
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1503.649 Witness fees.
1503.651 Record.
1503.653 Argument before the ALJ.
1503.655 Initial decision.
1503.657 Appeal from initial decision.
1503.659 Petition to reconsider or modify a final decision and order of the TSA decision maker on appeal.
1503.661 Judicial review of a final order.

Subpart H—Judicial Assessment of Civil Penalties

1503.701 Applicability of this subpart.
1503.703 Civil penalty letter; referral.

Subpart I—Formal Complaints

1503.801 Formal complaints.

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314; Sec. 1413(i), Public Law 110–53, 121 Stat. 414 (6 U.S.C. 1142).

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

Subpart A—[Reserved]

Subpart B—Scope of Investigative and Enforcement Procedures

§ 1503.101 TSA requirements.

(a) The investigative and enforcement procedures in this part apply to TSA's investigation and enforcement of violations of TSA requirements.

(b) For purposes of this part, the term *TSA requirements* means the following statutory provisions and a regulation prescribed or order issued under any of those provisions:

(1) Those provisions of title 49 U.S.C. administered by the Administrator; and

(2) 46 U.S.C. chapter 701.

§ 1503.103 Terms used in this part.

In addition to the terms in § 1500.3 of this chapter, the following definitions apply in this part:

Administrative law judge or *ALJ* means an ALJ appointed pursuant to the provisions of 5 U.S.C. 3105.

Agency attorney means the Deputy Chief Counsel for Enforcement or an attorney that he or she designates. An *agency attorney* will not include—

(1) Any attorney in the Office of the Chief Counsel who advises the TSA decision maker regarding an initial decision or any appeal to the TSA decision maker; or

(2) Any attorney who is supervised in a civil penalty action by a person who provides such advice to the TSA decision maker in that action or a factually related action.

Attorney means any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law.

Enforcement Investigative Report or *EIR* means a written report prepared by a TSA Inspector or other authorized agency official detailing the results of an inspection or investigation of a violation of a TSA requirement, including copies of any relevant evidence.

Mail includes regular First Class U.S. mail service, U.S. certified mail, or U.S. registered mail.

Party means the respondent or TSA.

Personal delivery includes hand-delivery or use of a contract or express messenger service, including an overnight express courier service. *Personal delivery* does not include the use of Government interoffice mail service.

Pleading means a complaint, an answer, motion and any amendment of these documents permitted under this subpart as well as any other written submission to the ALJ or a party during the course of the hearing proceedings.

Properly addressed means a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under this part, or any other address obtained by other reasonable and available means.

Public transportation agency means a publicly owned operator of public transportation eligible to receive Federal assistance under 49 U.S.C. chapter 53.

Respondent means the person named in a Notice of Proposed Civil Penalty, a Final Notice of Proposed Civil Penalty and Order, or a complaint.

TSA decision maker means the Administrator, acting in the capacity of the decision maker on appeal, or any person to whom the Administrator has delegated the Administrator's decision-making authority in a civil penalty action. As used in this part, the *TSA decision maker* is the official authorized to issue a final decision and order of the Administrator in a civil penalty action.

Subpart C—Investigative Procedures

§ 1503.201 Reports of violations.

(a) Any person who knows of a violation of a TSA requirement should report it to appropriate personnel of any TSA office.

(b) TSA will review each report made under this section, together with any other information TSA may have that is relevant to the matter reported, to determine the appropriate response, including additional investigation or administrative or legal enforcement action.

§ 1503.203 Investigations.

(a) *General.* The Administrator, or a designated official, may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) *Delegation of authority.* For the purpose of investigating alleged violations of a TSA requirement, the Administrator's authority may be exercised by the agency's various offices for matters within their respective areas for all routine investigations. When the compulsory processes of 49 U.S.C. 46104 are invoked, the Administrator's authority has been delegated to the Chief Counsel, each Deputy Chief Counsel, and in consultation with the Office of Chief Counsel, the Assistant Administrator for Security Operations, the Assistant Administrator for Transportation Sector Network Management, the Assistant Administrator for Inspections, the Assistant Administrator for Law Enforcement/Director of the Federal Air Marshal Service, each Special Agent in Charge, and each Federal Security Director.

§ 1503.205 Records, documents, and reports.

Each record, document, and report that regulations issued by the Transportation Security Administration require to be maintained, exhibited, or submitted to the Administrator may be used in any investigation conducted by the Administrator; and, except to the extent the use may be specifically limited or prohibited by the section that imposes the requirement, the records, documents, and reports may be used in any civil penalty action or other legal proceeding.

Subpart D—Non-Civil Penalty Enforcement

§ 1503.301 Warning notices and letters of correction.

(a) If TSA determines that a violation or an alleged violation of a TSA requirement does not require the assessment of a civil penalty, an appropriate official of the TSA may take administrative action in disposition of the case.

(b) An administrative action under this section does not constitute a formal adjudication of the matter, and may be taken by issuing the alleged violator—

(1) A ''Warning Notice'' that recites available facts and information about the incident or condition and indicates that it may have been a violation; or

(2) A ''Letter of Correction'' that confirms the TSA decision in the matter and states the necessary corrective action the alleged violator has taken or agrees to take. If the agreed corrective action is not fully completed, legal enforcement action may be taken.

(c) The issuance of a Warning Notice or Letter of Correction is not subject to appeal under this part.

(d) In the case of a public transportation agency that is determined to be in violation of a TSA requirement, an appropriate TSA official will seek correction of the violation through a written ''Notice of Noncompliance'' to the public transportation agency giving the public transportation agency reasonable opportunity to correct the violation or propose an alternative means of compliance acceptable to TSA.

(e) TSA will not take legal enforcement action against a public transportation agency under subpart E unless it has provided the Notice of Noncompliance described in paragraph (d) of this section and the public transportation agency fails to correct the violation or propose an alternative means of compliance acceptable to TSA within the timeframe provided in the notice.

(f) TSA will not initiate civil enforcement action for violations of administrative and procedural requirements pertaining to the application for, and the expenditure of, funds awarded pursuant to transportation security grant programs under Public Law 110–53.

Subpart E—Assessment of Civil Penalties by TSA

§ 1503.401 Maximum penalty amounts.

(a) *General.* TSA may assess civil penalties not exceeding the following amounts against a person for the violation of a TSA requirement.

(b) *In General.* Except as provided in paragraph (c) of this section, in the case of violation of title 49 U.S.C. or 46 U.S.C. chapter 701, or a regulation prescribed or order issued under any of those provisions, TSA may impose a civil penalty in the following amounts:

(1) $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632); and

(2) $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person.

(c) *Certain aviation related violations.* In the case of a violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, or a regulation prescribed or order issued under any of those provisions, TSA may impose a civil penalty in the following amounts:

(1) $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632).

(2) $25,000 per violation, up to a total of $400,000 per civil penalty action, in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

(d) *Inflation adjustment.* TSA may adjust the maximum civil penalty amounts in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note). Minimum and maximum civil penalties within the jurisdiction of TSA are adjusted for inflation as follows:

TABLE 1—MINIMUM AND MAXIMUM CIVIL PENALTIES—ADJUSTED FOR INFLATION, EFFECTIVE DECEMBER 12, 2003 TO AUGUST 20, 2009

United States Code citation	Civil penalty description	Minimum penalty	Adjusted minimum penalty	Maximum penalty amount when last set or adjusted pursuant to law	Maximum penalty amount
49 U.S.C. 46301(a)(1), (4).	Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by a person operating an aircraft for the transportation of passengers or property for compensation.	N/A	N/A	$25,000 per violation, reset 12/12/2003.	$25,000 per violation.
49 U.S.C. 46301(a)(1), (4).	Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern.	N/A	N/A	$10,000 per violation, reset 12/12/2003.	$10,000 per violation.

TABLE 2—MINIMUM AND MAXIMUM CIVIL PENALTIES—ADJUSTED FOR INFLATION, EFFECTIVE AUGUST 20, 2009

United States Code Citation	Civil penalty description	Minimum penalty	Adjusted minimum penalty	Maximum penalty amount when last set or adjusted pursuant to law	Maximum penalty amount
49 U.S.C. 46301(a)(1), (4).	Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by a person operating an aircraft for the transportation of passengers or property for compensation.	N/A	N/A	$25,000 per violation, reset 12/12/2003.	$27,500 per violation.
49 U.S.C. 46301(a)(1), (4).	Violation of 49 U.S.C. ch. 449 (except secs. 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, a regulation prescribed, or order issued thereunder by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern.	N/A	N/A	$10,000 per violation, reset 12/12/2003.	$11,000 per violation.
49 U.S.C. 114(v)	Violation of any other provision of title 49 U.S.C. or of 46 U.S.C. ch. 701, a regulation prescribed, or order issued under thereunder.	N/A	N/A	NA	$10,000 per violation.

§ 1503.403 Delegation of authority.

The Administrator delegates the following authority to the Chief Counsel and the Deputy Chief Counsel for Enforcement, which authority may be redelegated as necessary:

(a) To initiate and assess civil penalties under 49 U.S.C. 114 and 46301 and this subpart for a violation a TSA requirement;

(b) To compromise civil penalties initiated under this subpart; and

(c) To refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for the collection of civil penalties.

§ 1503.405 Injunctions.

Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of a TSA requirement, the Chief Counsel or the Deputy Chief Counsel for Enforcement may request the Attorney General of the United States, or the delegate of the Attorney General, to bring an action in the appropriate United States district court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages, as provided by 49 U.S.C. 114 and 46107.

§ 1503.407 Military personnel.

If a report made under this part indicates that, while performing official duties, a member of the Armed Forces, or a civilian employee of the Department of Defense who is subject to the Uniform Code of Military Justice (10 U.S.C. chapter 47), has violated a TSA requirement, an agency official will send a copy of the report to the

appropriate military authority for such disciplinary action as that authority considers appropriate and a report to the Administrator thereon.

§ 1503.409 Service of documents.

(a) *General.* This section governs service of documents required to be made under this part.

(b) *Type of service.* A person may serve documents by:

(1) Personal delivery;

(2) Mail, or

(3) Electronic mail or facsimile transmission, if consented to in writing by the person served, except that such service is not effective if the party making service receives credible information indicating that the attempted service did not reach the person to be served.

(c) If a party serves a pleading on another party during the course of hearing proceedings by electronic mail or facsimile transmission, the party making service must file with the Enforcement Docket Clerk a copy of the consent of the receiving party to accept such method of service.

(d) *Date of service.* The date of service will be:

(1) The date of personal delivery.

(2) If mailed, the mailing date stated on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(3) If sent by electronic mail or facsimile transmission, the date of transmission.

(e) *Valid service.* A document served by mail or personal delivery that was properly addressed, was sent in accordance with this part, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this part. The service will be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was attempted and refused.

(f) *Presumption of service.* There will be a presumption of service where a party or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

(g) *Additional time after service by mail.* Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days will be added to the prescribed period.

(h) *Service of documents filed with the Enforcement Docket.* A person must serve a copy of any document filed with the Enforcement Docket on each party and the ALJ or the chief ALJ if no judge has been assigned to the proceeding at the time of filing. Service on a party's attorney of record or a party's designated representative is service on the party.

(i) *Certificate of service.* Each party must attach a certificate of service to any document tendered for filing with the Enforcement Docket Clerk. A certificate of service must consist of a statement, dated and signed by the person who effected service, of the name(s) of the person(s) served, and the method by which each person was served and the date that the service was made.

(j) *Service by the ALJ.* The ALJ must serve a copy of each document he or she issues including, but not limited to, notices of pre-hearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings.

§ 1503.411 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this part, or by notice or order of an ALJ.

(b) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this subpart.

(c) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, a legal holiday, or a day on which the enforcement docket is officially closed. If the last day of the time period is a Saturday, Sunday, legal holiday, or a day on which the enforcement docket is officially closed, the time period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or a day on which the enforcement docket is officially closed.

§ 1503.413 Notice of Proposed Civil Penalty.

(a) *Issuance.* TSA may initiate a civil penalty action under this section by serving a Notice of Proposed Civil Penalty on the person charged with a violation of a TSA requirement. TSA will serve the Notice of Proposed Civil Penalty on the individual charged with a violation or on the president of the corporation or company charged with a violation, or other representative or employee previously identified in writing to TSA as designated to receive such service. A corporation or company may designate in writing to TSA another person to receive service of any subsequent documents in that civil penalty action.

(b) *Contents.* The Notice of Proposed Civil Penalty contains a statement of the facts alleged, the statute, regulation, or order allegedly violated, the amount of the proposed civil penalty, and a certificate of service.

(c) *Response.* Not later than 30 days after receipt of the Notice of Proposed Civil Penalty, the person charged with a violation may take one, and only one, of the following options.

(1) Submit a certified check or money order in the amount of the proposed civil penalty made payable to Transportation Security Administration, at the address specified in the Notice of Proposed Civil Penalty, or make payment electronically through *http://www.pay.gov*.

(2) Submit to the agency attorney who issued the Notice of Proposed Civil Penalty one of the following:

(i) A written request that TSA issue an Order Assessing Civil Penalty in the amount stated in the Notice of Proposed Civil Penalty without further notice, in which case the person waives the right to request a Formal Hearing, and payment is due within 30 days of receipt of the Order.

(ii) Written information and other evidence, including documents and witness statements, demonstrating that a violation of the regulations did not occur as alleged, or that the proposed penalty is not warranted by the circumstances.

(iii) A written request to reduce the proposed civil penalty, the amount of requested reduction, together with any documents supporting a reduction of the proposed civil penalty, which reflect a current financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iv) A written request for an Informal Conference, at a date to be determined by the agency attorney, to discuss the matter with the agency attorney and to submit supporting evidence and information to the agency attorney before the date of the Informal Conference.

(3) Submit to the agency attorney and to TSA's Enforcement Docket Clerk a written request for a Formal Hearing before an ALJ in accordance with subpart G of this part. TSA's Enforcement Docket Clerk is currently located at the United States Coast Guard (USCG) ALJ Docketing Center, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022. If this location changes, TSA will provide notice of the change by notice in the **Federal Register**.

§ 1503.415 Request for portions of the enforcement investigative report (EIR).

(a) Upon receipt of a Notice of Proposed Civil Penalty, a person charged with a violation of a TSA requirement, or a representative designated in writing by that person, may request from the agency attorney who issued the Notice of Proposed Civil Penalty portions of the relevant EIR that are not privileged (*e.g.,* under the deliberative process, attorney work-product, or attorney-client privileges). This information will be provided for the sole purpose of providing the information necessary to prepare a response to the allegations contained in the Notice of Proposed Civil Penalty. Sensitive Security Information (SSI) contained in the EIR may be released pursuant to 49 CFR part 1520. Information released under this section is not produced under the Freedom of Information Act.

(b) Any person not listed in paragraph (a) of this section that is interested in obtaining a copy of the EIR must submit a FOIA request pursuant to 5 U.S.C. 552, *et seq.,* 49 CFR part 7, and any applicable DHS regulations. Portions of the EIR may be exempt from disclosure pursuant to FOIA.

§ 1503.417 Final Notice of Proposed Civil Penalty and Order.

(a) *Issuance.* TSA may issue a Final Notice of Proposed Civil Penalty and Order (''Final Notice and Order'') to a person charged with a violation in the following circumstances:

(1) The person has failed to respond to a Notice of Proposed Civil Penalty within 30 days after receipt of that notice.

(2) The person requested an Informal Conference under § 1503.413(c)(2), but failed to attend the conference or continuation of the conference or provide the agency attorney with a written request showing good cause for rescheduling of the informal conference to a specified alternate date.

(3) The parties have participated in an Informal Conference or other informal proceedings as provided in § 1503.413(c)(2) and the parties have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of proposed civil penalty.

(b) *Contents.* The Final Notice and Order will contain a statement of the facts alleged, the law allegedly violated by the respondent, and the amount of the proposed civil penalty. The Final Notice and Order may reflect a modified allegation or proposed civil penalty as a result of information submitted to the agency attorney during the informal proceedings held under § 1503.413(c)(2).

§ 1503.419 Order Assessing Civil Penalty.

(a) *Issuance pursuant to a settlement.* TSA will issue an Order Assessing Civil Penalty if the parties have participated in an Informal Conference or other informal proceedings as provided in § 1503.413(c)(2) and agreed to a civil penalty amount in compromise of the matter, in which case the person waives the right to request a formal hearing, and payment is due within 30 days of receipt of the Order.

(b) *Automatic issuance.* A Final Notice and Order automatically converts to an Order Assessing Civil Penalty if—

(1) The person charged with a violation submits a certified check or money order in the amount reflected in the Final Notice and Order to Transportation Security Administration, to the address specified in the Final Notice and Order, or makes such payment electronically through *http://www.pay.gov*; or

(2) The person fails to respond to the Final Notice and Order or request a formal hearing within 15 days after receipt of that notice.

§ 1503.421 Streamlined civil penalty procedures for certain security violations.

(a) *Notice of violation.* TSA, at the agency's discretion, may initiate a civil penalty action through issuance of a Notice of Violation for violations described in the section and as otherwise provided by the Administrator. TSA may serve a Notice of Violation on an individual who violates a TSA requirement by presenting a weapon, explosive, or incendiary for screening at an airport or in checked baggage, where the amount of the proposed civil penalty is less than $5,000.

(b) *Contents.* A Notice of Violation contains a statement of the charges, the amount of the proposed civil penalty, and an offer to settle the matter for a lesser specified penalty amount.

(c) *Response.* Not later than 30 days after receipt of the Notice of Violation, the individual charged with a violation must respond to TSA by taking one, and only one, of the following options.

(1) Submit a certified check or money order for the lesser specified penalty amount in the Notice of Violation, made payable to Transportation Security Administration and sent to the address specified in the Notice of Violation, or make such payment electronically through *http://www.pay.gov.*

(2) Submit to the office identified in the Notice of Violation one of the following:

(i) Written information and other evidence, including documents and witness statements, demonstrating that a violation of the regulations did not occur as alleged, or that the proposed penalty is not warranted by the circumstances.

(ii) A written request to reduce the proposed civil penalty, the amount of requested reduction, together with any documents supporting a reduction of the proposed civil penalty, which reflect a current financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iii) A written request for an Informal Conference, at a date to be determined by an agency official, to discuss the matter with the agency official and to submit supporting evidence and information to the agency official before the date of the Informal Conference.

(3) Submit to the office identified in the Notice of Violation and to TSA's Enforcement Docket Clerk a written request for a formal hearing before an ALJ in accordance with subpart G. A request for a formal hearing before an ALJ must be submitted to the address provided in § 1503.413(c)(3).

(d) *Final Notice of Violation and Civil Penalty Assessment Order.* TSA may issue a Final Notice of Violation and Civil Penalty Assessment Order (''Final Notice and Order'') to the recipient of a Notice of Violation in the following circumstances:

(1) The individual has failed to respond to a Notice of Violation within 30 days after receipt of that notice.

(2) The individual requested an Informal Conference under § 1503.421(c)(2)(iii) but failed to attend the conference or continuation of the conference or provide the agency official with a written request showing good cause for rescheduling the informal conference to a specified alternate date.

(3) The parties have participated in an Informal Conference or other informal proceedings as provided in § 1503.421(c)(2) and the parties have not agreed to compromise the action or the agency official has not agreed to withdraw the Notice of Violation.

(e) *Order Assessing Civil Penalty.* A Final Notice and Order automatically converts to an Order Assessing Civil Penalty if—

(1) The individual charged with a violation submits a certified check or money order in the amount reflected in the Final Notice and Order to Transportation Security Administration at the address specified in the Final Notice and Order, or makes such

payment electronically through *http://www.pay.gov*; or

(2) The individual fails to respond to the Final Notice and Order or request a formal hearing within 15 days after receipt of that notice.

(f) *Delegation of authority.* The authority of the Administrator, under 49 U.S.C. 46301, to initiate, negotiate, and settle civil penalty actions under this section is delegated to the Assistant Administrator for Security Operations. This authority may be further delegated.

§ 1503.423 Consent orders.

(a) *Issuance.* At any time before the issuance of an Order Assessing Civil Penalty under this subpart, an agency attorney and a person subject to a Notice of Proposed Civil Penalty, or an agency official and a person subject to a Notice of Violation, may agree to dispose of the case by the issuance of a consent order by TSA.

(b) *Contents.* A consent order contains the following:

(1) An admission of all jurisdictional facts.

(2) An admission of agreed-upon allegations.

(3) A statement of the law violated.

(4) A finding of violation.

(5) An express waiver of the right to further procedural steps and of all rights to administrative and judicial review.

§ 1503.425 Compromise orders.

(a) *Issuance.* At any time before the issuance of an Order Assessing Civil Penalty under this subpart, an agency attorney and a person subject to a Notice of Proposed Civil Penalty, or an agency official and a person subject to a Notice of Violation, may agree to dispose of the case by the issuance of a compromise order by TSA.

(b) *Contents.* A compromise order contains the following:

(1) All jurisdictional facts.

(2) All allegations.

(3) A statement that the person agrees to pay the civil penalty specified.

(4) A statement that TSA makes no finding of a violation.

(5) A statement that the compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding.

§ 1503.427 Request for a formal hearing.

(a) *General.* Any respondent may request a formal hearing, pursuant to § 1503.413(c)(3) or § 1503.421(c)(3), to be conducted in accordance with the procedures in subpart G of this part. The filing of a request for a formal hearing does not guarantee a person an opportunity to appear before an ALJ in person, because the ALJ may issue an initial decision or dispositive order resolving the case prior to the commencement of the formal hearing.

(b) *Form.* The person submitting a request for hearing must date and sign the request, and must include his or her current address. The request for hearing must be typewritten or legibly handwritten.

(c) *Submission of request.* A person requesting a hearing must file a written request for a hearing with the Enforcement Docket Clerk in accordance with § 1503.429 and must serve a copy of the request on the agency attorney or other agency official who issued the Notice of Proposed Civil Penalty, or Notice of Violation, as applicable, and any other party, in accordance with § 1503.429.

§ 1503.429 Filing of documents with the Enforcement Docket Clerk.

(a) *General.* This section governs filing of documents with the Enforcement Docket Clerk when required under this part.

(b) *Type of service.* A person must file a document with the Enforcement Docket Clerk by delivering two copies of the document as follows:

(1) By personal delivery or mail, to United States Coast Guard (USCG) ALJ Docketing Center, ATTN: Enforcement Docket Clerk, at the address specified in § 1503.413(c)(3).

(2) By electronic mail, to *ALJdocket@ALJBalt.USCG.MIL.* If this e-mail address changes, TSA will provide notice of the change by notice in the **Federal Register.**

(3) By facsimile transmission, to 410–962–1746. If this number changes, TSA will provide notice of the change by notice in the **Federal Register**.

(c) *Contents.* Unless otherwise specified in this part, each document must contain a short, plain statement of the facts supporting the person's position and a brief statement of the action requested in the document. Each document must be typewritten or legibly handwritten.

(d) *Date of filing.* The date of filing will be as follows:

(1) The date of personal delivery.

(2) If mailed, the mailing date stated on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(3) If sent by electronic mail or facsimile transmission, the date of transmission.

(e) *Service of documents filed with the Enforcement Docket.* A person must serve a copy of any document filed with the Enforcement Docket on each party and the ALJ or the chief ALJ if no judge has been assigned to the proceeding at the time of filing. Service on a party's attorney of record or a party's designated representative is service on the party.

§ 1503.431 Certification of documents.

(a) *General.* This section governs each document tendered for filing with the Enforcement Docket Clerk under this part.

(b) *Signature required.* The attorney of record, the party, or the party's representative must sign each document tendered for filing with the Enforcement Docket Clerk, or served on the ALJ, the TSA decision maker on appeal, or each party.

(c) *Effect of signing a document.* By signing a document, the attorney of record, the party, or the party's representative certifies that he or she has read the document and, based on reasonable inquiry and to the best of that person's knowledge, information, and belief, the document is—

(1) Consistent with the rules in this part;

(2) Warranted by existing law or that a good faith and nonfrivolous argument exists for extension, modification, or reversal of existing law;

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose; and

(4) Supported by evidence, and any denials of factual contentions are warranted on the evidence.

(d) *Sanctions.* On motion of a party, if the ALJ or TSA decision maker finds that any attorney of record, the party, or the party's representative has signed a document in violation of this section, the ALJ or the TSA decision maker, as appropriate, will do the following:

(1) Strike the pleading signed in violation of this section.

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party.

(3) Deny the motion or request signed in violation of this section.

(4) Exclude the document signed in violation of this section from the record.

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record.

(6) Dismiss the appeal of the ALJ's initial decision to the TSA decision maker.

Subpart F—[Reserved]

Subpart G—Rules of Practice in TSA Civil Penalty Actions

§ 1503.601 Applicability.

(a) This subpart applies to a civil penalty action in which the requirements of paragraphs (a)(1) through (a)(3) of this section are satisfied.

(1) There is an alleged violation of a TSA requirement.

(2) The amount in controversy does not exceed—

(i) $50,000 if the violation was committed by an individual or a small business concern;

(ii) $400,000 if the violation was committed by any other person.

(3) The person charged with the violation has requested a hearing in accordance with § 1503.427 of this part.

(b) This subpart does not apply to the adjudication of the validity of any TSA rule or other requirement under the U.S. Constitution, the Administrative Procedure Act, or any other law.

§ 1503.603 Separation of functions.

(a) Civil penalty proceedings, including hearings, will be prosecuted only by an agency attorney, except to the extent another agency official is permitted to issue and prosecute civil penalties under § 1503.421 of this part.

(b) An agency employee engaged in the performance of investigative or prosecutorial functions in a civil penalty action must not, in that case or a factually related case, participate or give advice in a decision by the ALJ or by the TSA decision maker on appeal, except as counsel or a witness in the public proceedings.

(c) The Chief Counsel or an agency attorney not covered by paragraph (b) of this section will advise the TSA decision maker regarding an initial decision or any appeal of a civil penalty action to the TSA decision maker.

§ 1503.605 Appearances and rights of parties.

(a) Any party may appear and be heard in person.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party and may be examined by that attorney or representative in any proceeding governed by this subpart. An attorney or representative who represents a respondent and has not previously filed a pleading in the matter must file a notice of appearance in the action, in the manner provided in § 1503.429, and must serve a copy of the notice of appearance on each party, in the manner provided in § 1503.409, before participating in any proceeding governed by this subpart. The attorney or representative must include the name, address, and telephone number of the attorney or representative in the notice of appearance.

§ 1503.607 Administrative law judges.

(a) *Powers of an ALJ.* In accordance with the rules of this subpart, an ALJ may:

(1) Give notice of, and hold, prehearing conferences and hearings.

(2) Issue scheduling orders and other appropriate orders regarding discovery or other matters that come before him or her consistent with the rules of this subpart.

(3) Administer oaths and affirmations.

(4) Issue subpoenas authorized by law.

(5) Rule on offers of proof.

(6) Receive relevant and material evidence.

(7) Regulate the course of the hearing in accordance with the rules of this subpart.

(8) Hold conferences to settle or to simplify the issues on his or her own motion or by consent of the parties.

(9) Rule on procedural motions and requests.

(10) Make findings of fact and conclusions of law, and issue an initial decision.

(11) Strike unsigned documents unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(12) Order payment of witness fees in accordance with § 1503.649.

(b) *Limitations on the power of the ALJ.* (1) The ALJ may not:

(i) Issue an order of contempt.

(ii) Award costs to any party.

(iii) Impose any sanction not specified in this subpart.

(iv) Adopt or follow a standard of proof or procedure contrary to that set forth in this subpart.

(v) Decide issues involving the validity of a TSA regulation, order, or other requirement under the U.S. Constitution, the Administrative Procedure Act, or other law.

(2) If the ALJ imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right pursuant to § 1503.631(c)(3).

(3) This section does not preclude an ALJ from issuing an order that bars a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding.

(c) *Disqualification.* The ALJ may disqualify himself or herself at any time. A party may file a motion, pursuant to § 1503.629(f)(6), requesting that an ALJ be disqualified from the proceedings.

§ 1503.609 Complaint.

(a) *Filing.* The agency attorney must file the complaint with the Enforcement Docket Clerk in accordance with § 1503.429, or may file a written motion pursuant to § 1503.629(f)(2)(i) instead of filing a complaint, not later than 30 days after receipt by the agency attorney of a request for hearing. The agency attorney should suggest a location for the hearing when filing the complaint.

(b) *Contents.* A complaint must set forth the facts alleged, any statute, regulation, or order allegedly violated by the respondent, and the proposed civil penalty in sufficient detail to provide notice of any factual or legal allegation and proposed civil penalty.

§ 1503.611 Answer.

(a) *Filing.* A respondent must file a written answer to the complaint in accordance with § 1503.429, or may file a written motion pursuant to § 1503.629(f)(1)–(4) instead of filing an answer, not later than 30 days after service of the complaint. Subject to paragraph (c) of this section, the answer may be in the form of a letter, but must be dated and signed by the person responding to the complaint. An answer may be typewritten or may be legibly handwritten. The person filing an answer should suggest a location for the hearing when filing the answer.

(b) *Contents.* An answer must specifically state any affirmative defense that the respondent intends to assert at the hearing. A person filing an answer may include a brief statement of any relief requested in the answer.

(c) *Specific denial of allegations required.* A person filing an answer must admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of that allegation. A general denial of the complaint is deemed a failure to file an answer.

(d) *Failure to file answer.* A person's failure to file an answer without good cause, as determined by the ALJ, will be deemed an admission of the truth of each allegation contained in the complaint.

§ 1503.613 Consolidation and separation of cases.

(a) *Consolidation.* If two or more actions involve common questions of law or fact, the Chief Administrative Law Judge may do the following:

(1) Order a joint hearing or trial on any or all such questions.

(2) Order the consolidation of such actions.

(3) Otherwise make such orders concerning the proceedings as may tend to avoid unnecessary costs or delay.

(b) *Consolidation shall not affect the applicability of this part.* Consolidation of two or more actions that individually meet the jurisdictional amounts set forth in § 1503.601(a)(2) shall not cause the resulting consolidated action to come under the exclusive jurisdiction of the district courts of the United States as specified in 49 U.S.C. 46301(d)(4)(A).

(c) *Separate trials.* The Chief Administrative Law Judge, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, or of any separate issue, or any number of claims or issues.

§ 1503.615 Notice of hearing.

(a) *Notice.* The ALJ must give each party at least 60 days notice of the date, time, and location of the hearing. With the consent of the ALJ, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

(b) *Date, time, and location of the hearing.* The ALJ to whom the proceedings have been assigned must set a reasonable date, time, and location for the hearing. The ALJ must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The ALJ must give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier.

§ 1503.617 Extension of time.

(a) *Oral requests.* The parties may agree to extend for a reasonable period the time for filing a document under this subpart. If the parties agree, the ALJ must grant one extension of time to each party. The party seeking the extension of time must submit a draft order to the ALJ to be signed by the ALJ and filed with the Enforcement Docket Clerk. The ALJ may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) *Written motion.* A party must file a written motion for an extension of time not later than 7 days before the document is due unless the party shows good cause for the late filing. The ALJ may grant the extension of time if the party shows good cause.

(c) *Request for continuance of hearing.* Either party may request in writing a continuance of the date of a hearing, for good cause shown, no later than seven days before the scheduled date of the hearing. Good cause does not include a scheduling conflict involving the parties or their attorneys which by due diligence could have been foreseen.

(d) *Failure to rule.* If the ALJ fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed granted for no more than 20 days after the original date the document was to be filed. If the ALJ fails to rule on a request for continuance by the scheduled hearing date, the request is deemed granted for no more than 10 days after the scheduled hearing date.

§ 1503.619 Intervention.

(a) A person may file a motion for leave to intervene as a party in a civil penalty action. The person must file a motion for leave to intervene not later than 10 days before the hearing unless the person shows good cause for the late filing.

(b) If the ALJ finds that intervention will not unduly broaden the issues or delay the proceedings, the ALJ may grant a motion for leave to intervene if the person will be bound by any order or decision entered in the action or the person has a property, financial, or other legitimate interest that may not be addressed adequately by the parties. The ALJ may determine the extent to which an intervenor may participate in the proceedings.

§ 1503.621 Amendment of pleadings.

(a) *Filing and service.* A party must file the amendment with the Enforcement Docket Clerk and must serve a copy of the amendment on the ALJ and all parties to the proceeding.

(b) *Time.* A party must file an amendment to a complaint or an answer within the following:

(1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the ALJ.

(2) Less than 15 days before the scheduled date of a hearing, the ALJ may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(c) *Responses.* The ALJ must allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond if an amendment to a complaint, answer, or other pleading has been filed with the ALJ.

§ 1503.623 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, an agency attorney may withdraw a complaint or a respondent may withdraw a request for a hearing without the consent of the ALJ. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the ALJ must dismiss the proceedings under this subpart with prejudice, unless the withdrawing party shows good cause for dismissal without prejudice, except that a party may withdraw a request for hearing without prejudice at any time before a complaint has been filed.

§ 1503.625 Waivers.

Waivers of any rights provided by statute or regulation must be in writing or by stipulation made at a hearing and entered into the record. The parties must set forth the precise terms of the waiver and any conditions.

§ 1503.627 Joint procedural or discovery schedule.

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions, a schedule for conducting discovery in the proceedings, or a schedule that will govern all prehearing motions and discovery in the proceedings.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or discovery schedule, one of the parties must file the joint schedule with the ALJ, setting forth the dates to which the parties have agreed, and must serve a copy of the joint schedule on each party.

(1) The joint schedule may include, but need not be limited to, requests for discovery, any objections to discovery requests, responses to discovery requests to which there are no objections, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party must sign the original joint schedule to be filed with the Enforcement Docket Clerk.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Order establishing joint schedule.* The ALJ must approve the joint schedule filed by the parties. One party must submit a draft order establishing a joint schedule to the ALJ to be signed by

the ALJ and filed with the Enforcement Docket Clerk.

(e) *Disputes.* The ALJ must resolve disputes regarding discovery or disputes regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with the ALJ's order establishing a joint schedule, the ALJ may direct that party to comply with a motion or discovery request or, limited to the extent of the party's failure to comply with a motion or discovery request, the ALJ may do the following:

(1) Strike that portion of a party's pleadings.

(2) Preclude prehearing or discovery motions by that party.

(3) Preclude admission of that portion of a party's evidence at the hearing.

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 1503.629 Motions.

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart must do so by motion. A party must comply with the requirements of this section when filing a motion. A party must serve a copy of each motion on each party.

(b) *Form and contents.* A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must attach any supporting evidence, including affidavits, to the motion.

(c) *Filing of motions.* A motion made prior to the hearing must be in writing or orally on the record. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion, and must serve a copy on each party, not later than 30 days before the hearing. Motions introduced during a hearing may be made orally on the record unless the ALJ directs otherwise.

(d) *Reply to motions.* Any party may file a reply, with affidavits or other evidence in support of the reply, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the reply may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the ALJ. At the discretion of the ALJ, the moving party may file a response to the reply.

(e) *Rulings on motions.* The ALJ must rule on all motions as follows:

(1) *Discovery motions.* The ALJ must resolve all pending discovery motions not later than 10 days before the hearing.

(2) *Prehearing motions.* The ALJ must resolve all pending prehearing motions not later than 7 days before the hearing. If the ALJ issues a ruling or order orally, the ALJ must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the ALJ must issue rulings and orders in writing and must serve a copy of the ruling or order on each party.

(3) *Motions made during the hearing.* The ALJ may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(f) *Specific motions.* A party may file, but is not limited to, the following motions with the Enforcement Docket Clerk:

(1) *Motion to dismiss for insufficiency.* A respondent may file a motion to dismiss the complaint for insufficiency instead of filing an answer. If the ALJ denies the motion to dismiss the complaint for insufficiency, the respondent must file an answer not later than 20 days after service of the ALJ's denial of the motion. A motion to dismiss the complaint for insufficiency must show that the complaint fails to state a violation of a TSA requirement. If the ALJ grants the motion to dismiss the complaint for insufficiency, the agency attorney may amend the complaint in accordance with § 1503.621.

(2) *Motion to dismiss.* A party may file a motion to dismiss, specifying the grounds for dismissal. If an ALJ grants a motion to dismiss in part, a party may appeal the ALJ's ruling on the motion to dismiss under § 1503.631(b).

(i) *Motion to dismiss a request for a hearing.* An agency attorney may file a motion to dismiss a request for a hearing as untimely instead of filing a complaint. If the motion to dismiss is not granted, the agency attorney must file the complaint and must serve a copy of the complaint on each party not later than 20 days after service of the ALJ's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may file an appeal pursuant to § 1503.657. If required by the decision on appeal, the agency attorney must file a complaint and must serve a copy of the complaint on each party not later than 30 days after service of the decision on appeal.

(ii) *Motion to dismiss a complaint.* A respondent may file a motion to dismiss a complaint instead of filing an answer, on the ground that the complaint was not timely filed or on other grounds. If the ALJ does not grant the motion to dismiss, the respondent must file an answer and must serve a copy of the answer on each party not later than 30 days after service of the ALJ's ruling or order on the motion to dismiss. If the ALJ grants the motion to dismiss and the proceedings are terminated without a hearing, the agency attorney may file an appeal pursuant to § 1503.657. If required by the decision on appeal, the respondent must file an answer and must serve a copy of the answer on each party not later than 20 days after service of the decision on appeal.

(iii) *Motion to dismiss based on settlement.* A party may file a motion to dismiss based on a mutual settlement of the parties.

(3) *Motion for more definite statement.* A party may file a motion for more definite statement of any pleading that requires a response under this subpart. A party must set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and must submit the details that the party believes would make the allegation or response definite and certain.

(i) *Complaint.* A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. If the ALJ grants the motion, the agency attorney must supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the agency attorney fails to supply a more definite statement, the ALJ must strike the allegations in the complaint to which the motion is directed. If the ALJ denies the motion, the respondent must file an answer and must serve a copy of the answer on each party not later than 20 days after service of the order of denial.

(ii) *Answer.* An agency attorney may file a motion requesting a more definite statement if an answer fails to respond clearly to the allegations in the complaint. If the ALJ grants the motion, the respondent must supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the ALJ must strike those statements in the answer to which the motion is directed. The respondent's failure to supply a more definite statement may be deemed an admission of unanswered allegations in the complaint.

(4) *Motion to strike.* Any party may move to strike any insufficient allegation or defense, or any redundant, immaterial, or irrelevant matter in a pleading. A party must file a motion to strike before a response is required under this subpart or, if a response is

not required, not later than 10 days after service of the pleading.

(5) *Motion for decision.* A party may move for decision, regarding all or any part of the proceedings, at any time before the ALJ has issued an initial decision in the proceedings. A party may include with a motion for decision affidavits as well as any other evidence in support of the motion. The ALJ must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, affidavits, matters that the ALJ has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party moving for decision has the burden of showing that there is no genuine issue of material fact.

(6) *Motion for disqualification.* A party may file the motion at any time after the ALJ has been assigned to the proceedings but must make the motion before the ALJ files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party must state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors supporting disqualification, in the motion for disqualification. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Answer.* A party must respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The ALJ must render a decision on the motion for disqualification not later than 20 days after the motion has been filed. If the ALJ finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the ALJ must withdraw from the proceedings immediately. If the ALJ finds that disqualification is not warranted, the ALJ must deny the motion and state the grounds for the denial on the record. If the ALJ fails to rule on a party's motion for disqualification within 20 days after the motion has been filed, the motion is deemed granted.

(iv) *Appeal.* A party may appeal the ALJ's denial of the motion for disqualification in accordance with § 1503.631(b).

§ 1503.631 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the ALJ to the TSA decision maker until the initial decision has been entered on the record. A decision or order of the TSA decision maker on the interlocutory appeal does not constitute a final order of the Administrator for the purposes of judicial appellate review under 49 U.S.C. 46110.

(b) *Interlocutory appeal for cause.* If a party files a written request for an interlocutory appeal for cause with the ALJ, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the ALJ issues a decision on the request. If the ALJ grants the request, the proceedings are stayed until the TSA decision maker issues a decision on the interlocutory appeal. The ALJ must grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the ALJ of an interlocutory appeal of right, the proceedings are stayed until the TSA decision maker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal, without the consent of the ALJ, before an initial decision has been entered in the following cases:

(1) A ruling or order by the ALJ barring a person from the proceedings.

(2) Failure of the ALJ to dismiss the proceedings in accordance with § 1503.215.

(3) A ruling or order by the ALJ in violation of § 1503.607(b).

(4) A ruling or order by the ALJ regarding public access to a particular docket or documents.

(d) *Procedure.* Not later than 10 days after the ALJ's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the ALJ's decision granting an interlocutory appeal for cause, a party must file a notice of interlocutory appeal, with supporting documents, and the party must serve a copy of the notice and supporting documents on each party. Not later than 10 days after service of the appeal brief, a party must file a reply brief, if any, and the party must serve a copy of the reply brief on each party. The TSA decision maker must render a decision on the interlocutory appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) *Frivolous appeals.* The TSA decision maker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

§ 1503.633 Discovery.

(a) *Initiation of discovery.* Any party may initiate discovery described in this section, without the consent or approval of the ALJ, at any time after a complaint has been filed in the proceedings.

(b) *Methods of discovery.* The following methods of discovery are permitted under this section: depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party is not required to file written discovery requests and responses with the ALJ or the Enforcement Docket Clerk. In the event of a discovery dispute, a party must attach a copy of these documents in support of a motion made under this section.

(c) *Service on the agency.* A party must serve each discovery request directed to the agency or any agency employee on the agency attorney of record.

(d) *Time for response to discovery requests.* Unless otherwise directed by this subpart, agreed by the parties, or by order of the ALJ, a party must respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days after service of the request.

(e) *Scope of discovery.* Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party may not object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) *Limiting discovery.* The ALJ must limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) *Disclosure of Sensitive Security Information (SSI).* At the request of a party, TSA may provide SSI to the party when, in the sole discretion of TSA, access to the SSI is necessary for the party to prepare a response to allegations contained the complaint. TSA may provide such information subject to such restrictions on further disclosure and such safeguarding requirements as TSA determines appropriate.

(h) *Confidential orders.* A party or person who has received a discovery request for information, other than SSI, that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file a motion for a confidential order with the ALJ and must serve a copy of the motion for a confidential order on each party.

(1) The party or person making the motion must show that the confidential order is necessary to protect the information from disclosure to the public.

(2) If the ALJ determines that the requested material is not necessary to decide the case, the ALJ must preclude any inquiry into the matter by any party.

(3) If the ALJ determines that the requested material may be disclosed during discovery, the ALJ may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(4) If the ALJ determines that the requested material is necessary to decide the case and that a confidential order is warranted, the ALJ must provide the following:

(i) An opportunity for review of the document by the parties off the record.

(ii) Procedures for excluding the information from the record.

(iii) An order that the parties must not disclose the information in any manner and the parties must not use the information in any other proceeding.

(i) *Protective orders.* A party or a person who has received a request for discovery may file a motion for protective order and must serve a copy of the motion for protective order on each party. The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the ALJ may do the following:

(1) Deny the discovery request.

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery.

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(j) *Duty to supplement or amend responses.* A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party must supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party must supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness' testimony.

(3) A party must supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(k) *Depositions.* The following rules apply to depositions taken pursuant to this section:

(1) *Form.* A deposition must be taken on the record and reduced to writing. The person being deposed must sign the deposition unless the parties agree to waive the requirement of a signature.

(2) *Administration of oaths.* Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party must take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. Outside the United States, a party will take a deposition in any manner allowed by the Federal Rules of Civil Procedure (28 U.S.C. App.).

(3) *Notice of deposition.* A party must serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined, on the person to be deposed, on the ALJ, on the Enforcement Docket Clerk, and on each party not later than 7 days before the deposition. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the ALJ and for good cause shown. If a subpoena ''duces tecum'' is to be served on the person to be examined, the party must attach a copy of the subpoena duces tecum that describes the materials to be produced at the deposition to the notice of deposition.

(4) *Use of depositions.* A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(l) *Interrogatories.* A party, the party's attorney, or the party's representative may sign the party's responses to interrogatories. A party must answer each interrogatory separately and completely in writing. If a party objects to an interrogatory, the party must state the objection and the reasons for the objection. An opposing party may use any part or all of a party's responses to interrogatories at a hearing authorized under this subpart to the extent that the response is relevant, material, and not repetitious.

(1) A party must not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory will be counted as a separate interrogatory.

(2) Before serving additional interrogatories on a party, a party must file a motion for leave to serve additional interrogatories on a party with the ALJ and must serve a copy on each party before serving additional interrogatories on a party. The ALJ may grant the motion only if the party shows good cause for the party's failure to inquire about the information previously and that the information cannot reasonably be obtained using less burdensome discovery methods or be obtained from other sources.

(m) *Requests for admission.* A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party must set forth each request for admission separately. A party must serve copies of documents referenced in the request for admission unless the documents have been provided or are reasonably available for inspection and copying.

(1) *Time.* A party's failure to respond to a request for admission, in writing and signed by the attorney or the party, not later than 30 days after service of the request, is deemed an admission of the truth of the statement or statements

contained in the request for admission. The ALJ may determine that a failure to respond to a request for admission is not deemed an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney.

(2) *Response.* A party may object to a request for admission and must state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party must show that the party has made reasonable inquiry into the matter or that the information known to, or readily obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If the ALJ determines that a response does not comply with the requirements of this rule or that the response is insufficient, the matter is deemed admitted.

(3) *Effect of admission.* Any matter admitted or deemed admitted under this section is conclusively established for the purpose of the hearing and appeal.

(n) *Motion to compel discovery.* A party may move to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, if a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before moving to compel if a person refuses to answer.

(o) *Failure to comply with a discovery order or order to compel.* If a party fails to comply with a discovery order or an order to compel, the ALJ, limited to the extent of the party's failure to comply with the discovery order or motion to compel, may do the following:

(1) Strike that portion of a party's pleadings.

(2) Preclude prehearing or discovery motions by that party.

(3) Preclude admission of that portion of a party's evidence at the hearing.

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 1503.635 Evidence.

(a) *General.* A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) *Admissibility.* A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The ALJ must admit any oral, documentary, or demonstrative evidence introduced by a party, but must exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

§ 1503.637 Standard of proof.

The ALJ may issue an initial decision or may rule in a party's favor only if the decision or ruling is supported by a preponderance of the evidence contained in the record. In order to prevail, the party with the burden of proof must prove the party's case or defense by a preponderance of the evidence.

§ 1503.639 Burden of proof.

(a) Except in the case of an affirmative defense, the burden of proof is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 1503.641 Offer of proof.

A party whose evidence has been excluded by a ruling of the ALJ may offer the evidence for the record on appeal.

§ 1503.643 Public disclosure of evidence.

This section applies to information other than Sensitive Security Information (SSI). All release of SSI is governed by § 1503.415 and 49 CFR part 1520.

(a) The ALJ may order that any other information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the ALJ and serving a copy of the motion on each party. The party must state the specific grounds for nondisclosure in the motion.

(b) The ALJ must grant the motion to withhold information in the record if, based on the motion and any response to the motion, the ALJ determines that disclosure would be detrimental to transportation safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

§ 1503.645 Expert or opinion witnesses.

An employee of the agency may not be called as an expert or opinion witness, for any party other than TSA, in any proceeding governed by this subpart. An employee of a respondent may not be called by an agency attorney as an expert or opinion witness for TSA in any proceeding governed by this subpart to which the respondent is a party.

§ 1503.647 Subpoenas.

(a) *Request for subpoena.* A party may obtain a subpoena to compel the attendance of a witness at a deposition or hearing, or to require the production of documents or tangible items, from the ALJ who is assigned to the case, or, if no ALJ is assigned or the assigned law judge is unavailable, from the chief ALJ. The party must complete the subpoena, stating the title of the action and the date and time for the witness' attendance or production of documents or items. The party who obtained the subpoena must serve the subpoena on the witness or the custodian of the documents or tangible items sought to be produced.

(b) *Motion to quash or modify the subpoena.* A party, or any person upon whom a subpoena has been served, may file a motion to quash or modify the subpoena at or before the time specified in the subpoena for compliance. The applicant must describe, in detail, the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the ALJ on the motion.

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, a party may apply to the U.S. district court having jurisdiction to seek judicial enforcement of the subpoena in accordance with 49 U.S.C. 46104.

§ 1503.649 Witness fees.

(a) *General.* Unless otherwise authorized by the ALJ, the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or

hearing, must pay the witness fees described in this section.

(b) *Amount.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 1503.651 Record.

(a) *Exclusive record.* The request for hearing, complaint, answer, transcript of all testimony in the hearing, all exhibits received into evidence, and all motions, responses to motions, applications, requests, and rulings will constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding.

(b) *Examination and copying of record.* (1) *Generally.* Any person interested in reviewing or obtaining a copy of a record may do so only by submitting a Freedom of Information Act (FOIA) request under 5 U.S.C. 552, *et seq.*, 49 CFR part 7, and any applicable DHS regulations. Portions of the record may be exempt from disclosure pursuant to FOIA.

(2) *Docket Files or Documents Not for Public Disclosure.* (i) Only the following persons may review docket files or particular documents that are not for public disclosure:

(A) Parties to the proceedings.

(B) Their designated representatives.

(C) Persons who have a need to know as determined by the Administrator.

(ii) Those persons with permission to review these documents or docket files may view the materials at the TSA Headquarters, 601 South 12th Street, Arlington, Virginia 20598–6002. Persons with access to these records may have a copy of the records after payment of reasonable costs.

§ 1503.653 Argument before the ALJ.

(a) *Arguments during the hearing.* During the hearing, the ALJ must give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The ALJ may request written arguments during the hearing if the ALJ finds that submission of written arguments is necessary before the ALJ issues the ruling or order.

(b) *Final oral argument.* At the conclusion of the hearing and before the ALJ issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the ALJ, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Posthearing briefs.* The ALJ may request written posthearing briefs before the ALJ issues an initial decision in the proceedings. If a party files a written posthearing brief, the party must include proposed findings of fact and conclusions of law, exceptions to rulings of the ALJ, and supporting arguments for the findings, conclusions, or exceptions. The ALJ must give the parties a reasonable opportunity, not more than 30 days after receipt of the transcript, to prepare and submit the briefs.

§ 1503.655 Initial decision.

(a) *Contents.* The ALJ may issue an initial decision after the conclusion of the hearing or after the submission of written posthearing briefs, if so ordered. In each oral or written decision, the ALJ must include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the ALJ's discretion, the amount of any civil penalty found appropriate by the ALJ, and a discussion of the basis for any order issued in the proceedings. The ALJ is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the ALJ refers to any previous unreported or unpublished initial decision, the ALJ must make copies of that initial decision available to all parties and the TSA decision maker.

(b) *Written decision.* At the conclusion of the hearing, the ALJ may issue the initial decision and order orally on the record. The ALJ must issue a written initial decision and order not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief. The ALJ must serve a copy of any written initial decision on each party.

(c) *Order assessing civil penalty.* Unless appealed pursuant to § 1503.657, the initial decision issued by the ALJ will be considered an order assessing civil penalty if the ALJ finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the ALJ, is warranted.

(d) *Effect of initial decision.* An initial decision of an ALJ is persuasive authority in any other civil penalty action, unless appealed and reversed by the TSA decision maker or a court of competent jurisdiction.

§ 1503.657 Appeal from initial decision.

(a) *Notice of appeal.* Either party may appeal the initial decision, and any decision not previously appealed pursuant to § 1503.631, by filing a notice of appeal with the Enforcement Docket Clerk. A party must file the notice of appeal with USCG ALJ Docketing Center, ATTN: Enforcement Docket Clerk, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202–4022. A party must file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties and must serve a copy of the notice of appeal on each party. Upon filing of a notice of appeal, the effectiveness of the initial decision is stayed until a final decision and order of the TSA decision maker have been entered on the record.

(b) *Issues on appeal.* A party may appeal only the following issues:

(1) Whether each finding of fact is supported by a preponderance of the evidence.

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy.

(3) Whether the ALJ committed any prejudicial errors during the hearing that support the appeal.

(c) *Perfecting an appeal.* Unless otherwise agreed by the parties, a party must perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief with the Enforcement Docket Clerk.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for perfecting the appeal with the consent of the TSA decision maker. If the TSA decision maker grants an extension of time to perfect the appeal, the Enforcement Docket Clerk will serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for perfecting an appeal, a party desiring an extension of time may file a written motion for an extension with the Enforcement Docket Clerk and must serve a copy of the motion on each party. The TSA decision maker may grant an extension if good cause for the extension is shown in the motion.

(d) *Appeal briefs.* A party must file the appeal brief with the Enforcement Docket Clerk and must serve a copy of the appeal brief on each party.

(1) In the appeal brief, a party must set forth, in detail, the party's specific

objections to the initial decision or rulings, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If, for the appeal, the party relies on evidence contained in the record for the appeal, the party must specifically refer in the appeal brief to the pertinent evidence contained in the transcript.

(2) The TSA decision maker may dismiss an appeal, on the TSA decision maker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief.

(e) *Reply brief.* Unless otherwise agreed by the parties, any party may file a reply brief not later than 35 days after the appeal brief has been served on that party. The party filing the reply brief must serve a copy of the reply brief on each party. If the party relies on evidence contained in the record for the reply, the party must specifically refer to the pertinent evidence contained in the transcript in the reply brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for filing a reply brief with the consent of the TSA decision maker. If the TSA decision maker grants an extension of time to file the reply brief, the Enforcement Docket Clerk will serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file a written motion for an extension and will serve a copy of the motion on each party. The TSA decision maker may grant an extension if good cause for the extension is shown in the motion.

(f) *Other briefs.* The TSA decision maker may allow any person to submit an amicus curiae brief in an appeal of an initial decision. A party may not file more than one appeal brief or reply brief. A party may petition the TSA decision maker, in writing, for leave to file an additional brief and must serve a copy of the petition on each party. The party may not file the additional brief with the petition. The TSA decision maker may grant leave to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The TSA decision maker will allow a reasonable time for the party to file the additional brief.

(g) *Number of copies.* A party must file the original appeal brief or the original reply brief, and two copies of the brief, with the Enforcement Docket Clerk.

(h) *Oral argument.* The TSA decision maker has sole discretion to permit oral argument on the appeal. On the TSA decision maker's own initiative or upon written motion by any party, the TSA decision maker may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(i) *Waiver of objections on appeal.* If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The TSA decision maker is not required to consider any objection in an appeal brief or any argument in the reply brief if a party's objection is based on evidence contained in the record and the party does not specifically refer to the pertinent evidence from the record in the brief.

(j) *The TSA decision maker's decision on appeal.* The TSA decision maker will review the briefs on appeal and the oral argument, if any, to determine if the ALJ committed prejudicial error in the proceedings or that the initial decision should be affirmed, modified, or reversed. The TSA decision maker may affirm, modify, or reverse the initial decision, make any necessary findings, or may remand the case for any proceedings that the TSA decision maker determines may be necessary.

(1) The TSA decision maker may raise any issue, on the TSA decision maker's own initiative, that is required for proper disposition of the proceedings. The TSA decision maker will give the parties a reasonable opportunity to submit arguments on the new issues before making a decision on appeal. If an issue raised by the TSA decision maker requires the consideration of additional testimony or evidence, the TSA decision maker will remand the case to the ALJ for further proceedings and an initial decision related to that issue. If the TSA decision maker raises an issue that is solely an issue of law, or the issue was addressed at the hearing but was not raised by a party in the briefs on appeal, the TSA decision maker need not remand the case to the ALJ for further proceedings but has the discretion to do so.

(2) The TSA decision maker will issue the final decision and order of the Administrator on appeal in writing and will serve a copy of the decision and order on each party. Unless a petition for review is filed pursuant to § 1503.659, a final decision and order of the Administrator will be considered an order assessing civil penalty if the TSA decision maker finds that an alleged violation occurred and a civil penalty is warranted.

(3) A final decision and order of the Administrator after appeal is binding precedent in any other civil penalty action unless appealed and reversed by a court of competent jurisdiction.

(4) The TSA decision maker will determine whether the decision and order of the TSA decision maker, with the ALJ's initial decision or order attached, may be released to the public, either in whole or in redacted form. In making this determination, the TSA decision maker will consider whether disclosure of any of the information in the decision and order would be detrimental to transportation security, would not be in the public interest, or should not otherwise be required to be made available to the public.

§ 1503.659 Petition to reconsider or modify a final decision and order of the TSA decision maker on appeal.

(a) *General.* Any party may petition the TSA decision maker to reconsider or modify a final decision and order issued by the TSA decision maker on appeal from an initial decision. A party must file a petition to reconsider or modify not later than 30 days after service of the TSA decision maker's final decision and order on appeal and must serve a copy of the petition on each party. The TSA decision maker will not reconsider or modify an initial decision and order issued by an ALJ that has not been appealed by any party to the TSA decision maker and filed with the Enforcement Docket Clerk.

(b) *Form and number of copies.* A party must file in writing a petition to reconsider or modify. The party must file the original petition with the Enforcement Docket Clerk and must serve a copy of the petition on each party.

(c) *Contents.* A party must state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the TSA decision maker's decision, the party must describe and support those allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party must set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party must explain, in detail, why the new

material was not discovered through due diligence prior to the hearing.

(d) *Repetitious and frivolous petitions.* The TSA decision maker will not consider repetitious or frivolous petitions. The TSA decision maker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.

(e) *Reply petitions.* Any other party may reply to a petition to reconsider or modify, not later than 10 days after service of the petition on that party, by filing a reply with the Enforcement Docket Clerk. A party must serve a copy of the reply on each party.

(f) *Effect of filing petition.* Unless otherwise ordered by the TSA decision maker, filing a petition pursuant to this section will stay the effective date of the TSA decision maker's final decision and order on appeal.

(g) *The TSA decision maker's decision on petition.* The TSA decision maker has sole discretion to grant or deny a petition to reconsider or modify. The TSA decision maker will grant or deny a petition to reconsider or modify within a reasonable time after receipt of the petition or receipt of the reply petition, if any. The TSA decision maker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the TSA decision maker determines may be necessary.

§ 1503.661 Judicial review of a final order.

For violations of a TSA requirement, a party may petition for review of a final order of the Administrator only to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia pursuant to 49 U.S.C. 46110. A party seeking judicial review of a final order must file a petition for review not later than 60 days after the final order has been served on the party.

Subpart H—Judicial Assessment of Civil Penalties

§ 1503.701 Applicability of this subpart.

(a) *Jurisdictional minimums.* This subpart applies to a civil penalty action under this part in which the total amount in controversy exceeds the following amounts.

(b) *In general.* Except as provided in paragraph (c) of this section, in the case of violation of title 49 U.S.C. or 46 U.S.C chapter 701, a regulation prescribed, or order issued under any of those provisions, the amount in controversy exceeds the following:

(1) $50,000, in the case of violation by an individual or small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632).

(2) $400,000, in the case of violation by any other person.

(c) *Certain aviation related violations.* In the case of a violation of 49 U.S. C. chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions, the amount in controversy exceeds the following:

(1) $50,000, in the case of violation by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632).

(2) $400,000, in the case of violation by a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

§ 1503.703 Civil penalty letter; referral.

(a) *Issuance.* In a civil penalty action in which the amount in controversy exceeds the amounts set forth in § 1503.701, the Administrator will send a civil penalty letter to the person charged with a violation of a TSA requirement.

(b) *Contents.* The civil penalty letter will contain a statement of the charges; the applicable law, rule, regulation, or order; the amount of civil penalty that the Administrator will accept in full settlement of the action or an offer to compromise the civil penalty.

(c) *Response.* Not later than 30 days after receipt of the civil penalty letter, the person charged with a violation may present to the agency attorney any material or information in answer to the charges, either orally or in writing, that may explain, mitigate, or deny the violation or that may show extenuating circumstances. The Administrator will consider any material or information submitted in accordance with this paragraph (c) to determine whether the person is subject to a civil penalty or to determine the amount for which the Administrator will compromise the action.

(d) *Compromise.* If the person charged with a violation offers to compromise the civil penalty action for a specific amount, that person must send payment in a form and manner acceptable to TSA for that amount to the agency, made payable to the Transportation Security Administration, or make payment electronically through *http://www.pay.gov.* The Chief Counsel or the Deputy Chief Counsel for Civil Enforcement may accept the payment or may refuse and return the payment. If the Administrator accepts the offer to compromise, the agency will send a letter to the person charged with the violation stating that the payment is accepted in full settlement of the civil penalty action and that the matter is closed.

(e) *Referral for prosecution and collection.* If the parties cannot agree to compromise the civil penalty action or the offer to compromise is rejected and the payment submitted in compromise is returned, the Administrator may refer the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings in a United States district court, pursuant to the authority in 49 U.S.C. 114 or 46305 to prosecute and collect the civil penalty.

(f) The Administrator delegates to the Chief Counsel and the Deputy Chief Counsel for Enforcement the authority to carry out any function of the Administrator described in this § 1503.703.

Subpart I—Formal Complaints

§ 1503.801 Formal complaints.

(a) Any person may file a complaint with the Administrator with respect to any act or omission by any person in contravention of 49 U.S.C., subtitle VII, part A, (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909) administered by the Administrator, or a regulation prescribed or order issued under any of those provisions. This section does not apply to complaints against the Administrator or employees of the TSA acting within the scope of their employment.

(b) Complaints filed under this section must—

(1) Be submitted in writing and identified as a complaint filed for the purpose of seeking an appropriate order or other enforcement action;

(2) Be submitted to the U.S. Department of Homeland Security, Transportation Security Administration, by following the instructions to complete a ''complaint'' contact form by following the instructions on the TSA Web site, currently accessible at *http://www.tsa.gov/contact/index.shtm.*

(3) Set forth the name and address, if known, of each person who is the subject of the complaint and, with respect to each person, the specific provisions of the statute, regulation, or order that the person filing the complaint believes were violated;

(4) Contain a concise, but complete, statement of the facts relied upon to substantiate each allegation;

(5) State the name, address, and telephone number of the person filing the complaint; and

(6) Be signed by the person filing the complaint or a duly authorized representative.

(c) TSA will consider complaints that do not meet the requirements of paragraph (b) of this section as reports under § 1503.1.

(d) TSA will place complaints that meet the requirements of paragraph (b) of this section in the docket and will mail a copy to each person named in the complaint.

(e) TSA will refer any complaint against a member of the Armed Forces of the United States acting in the performance of official duties to the Secretary of the Department concerned in accordance with the procedures set forth in § 1503.407.

(f) The person named in the complaint must file an answer within 20 days after service of a copy of the complaint.

(g) After the complaint has been answered or after the allotted time in which to file an answer has expired, the Administrator, or a designated official, will determine if there are reasonable grounds for investigating the complaint.

(h) If the Administrator, or a designated official, determines that a complaint does not state facts that warrant an investigation or action, the Administrator or designated official may dismiss the complaint without a hearing and, if so, will provide the reason for the dismissal, in writing, to the person who filed the complaint and the person(s) named in the complaint.

(i) If the Administrator, or a designated official, determines that reasonable grounds exist, an informal investigation may be initiated. Each person named in the complaint will be advised which official has been delegated the responsibility under § 1503.203 for conducting the investigation.

(j) If the investigation substantiates the allegations set forth in the complaint, a notice of proposed order may be issued or other enforcement action taken in accordance with this part.

(k) The complaint and other pleadings and official TSA records relating to the disposition of the complaint are maintained in current docket form at: U.S. Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Complaint Docket, 601 South 12th Street, Arlington, VA 20598–6002. If this location changes, TSA will give notice of the change by publishing a notice in the **Federal Register.**

(1) *Generally.* Any person interested in reviewing or obtaining a copy of a record may do so only by submitting a Freedom of Information Act (FOIA) request under 5 U.S.C. 552, *et seq.* and 49 CFR part 7. Portions of the record may be exempt from disclosure pursuant to FOIA.

(2) *Docket files or documents not for public disclosure.* (i) Only the following persons may review docket files or particular documents that are not for public disclosure:

(A) Parties to the proceedings.

(B) Representatives designated in writing by a party.

(C) Persons who have a need to know as determined by the Administrator.

(ii) Those persons with permission to review these documents or docket files may view the materials at the Complaint Docket, TSA Headquarters, Visitor Center, 601 South 12th Street, Arlington, Virginia 20598–6002, Attn: Office of Chief Counsel. If this address changes, TSA will give notice by publishing a notice in the **Federal Register.** Persons with access to these records may have a copy of the records after payment of reasonable costs.

Issued in Arlington, Virginia, on July 10, 2009.

Gale D. Rossides,

Acting Administrator.

[FR Doc. E9–17133 Filed 7–20–09; 8:45 am]

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Federal Register

Tuesday,
July 21, 2009

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 229

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Harbor Porpoise Take Reduction Plan Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080721862–8864–01]

RIN 0648–AW51

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Harbor Porpoise Take Reduction Plan Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes to amend the regulations implementing the Harbor Porpoise Take Reduction Plan (HPTRP) to address the increased incidental mortality and serious injury of the Gulf of Maine/Bay of Fundy stock of harbor porpoises (*Phocoena phocoena*) in gillnet fisheries throughout the stock's U.S. range.

DATES: Comments on the proposed rule must be received by 5 p.m. EST on August 20, 2009.

ADDRESSES: Comments may be submitted on this proposed rule, identified by RIN 0648–AW51, by any one of the following methods:

(1) *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*

(2) *Mail:* Mary Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, Protected Resources Division, 55 Great Republic Drive, Suite 04–400, Gloucester, MA 01930, ATTN: HPTRP Proposed Rule.

(3) *Facsimile (fax) to:* 978–281–9394, ATTN: HPTRP Proposed Rule.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the draft HPTRP Environmental Assessment (EA) and Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this proposed rule may be obtained from the HPTRP Web site (*http://www.nero.noaa.gov/hptrp*) or by writing to Amanda Johnson, NMFS, Northeast Region, Protected Resources Division, 55 Great Republic Drive, Suite 04–400, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Amanda Johnson, NMFS, Northeast Region, 978–282–8463, *amanda.johnson@noaa.gov*; or Melissa Andersen, NMFS, Office of Protected Resources, 301–713–2322, *melissa.andersen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The 1994 amendments to the Marine Mammal Protection Act (MMPA) established Section 118, which includes provisions for addressing commercial fishery interactions with marine mammal stocks. The HPTRP was developed pursuant to Section 118(f) of the MMPA to reduce the level of serious injury and mortality of the Gulf of Maine/Bay of Fundy (GOM/BOF) stock of harbor porpoise interacting with Category I and II fisheries (i.e., those with frequent or occasional incidental serious injury or mortality of marine mammals). Under Section 118, take reduction plans (TRPs) are required for all strategic marine mammal stocks that are incidentally seriously injured or killed in Category I or II commercial fisheries. A strategic stock is a stock: (1) For which the level of direct human-caused mortality exceeds the stock's potential biological removal (PBR) level, (2) that is declining and is likely to be listed under the Endangered Species Act of 1973 (ESA) in the foreseeable future, or (3) that is listed as a threatened or endangered species under the ESA, or is designated as depleted under the MMPA. PBR is the maximum number of animals that may be removed from a marine mammal stock annually, not including natural mortalities, while allowing that stock to reach or maintain its optimum sustainable population. Because the current average annual human-related mortality and serious injury of harbor porpoise incidental to Category I and II commercial gillnet fisheries exceeds PBR, the GOM/BOF stock is considered strategic under the MMPA (Waring *et al.,* 2007a).

At the time the 1994 amendments to the MMPA were enacted, the GOM/BOF harbor porpoise stock was considered strategic due to interactions with the Northeast sink gillnet fishery and the Mid-Atlantic gillnet fishery. As such, NMFS was required by the MMPA to take action by forming a take reduction team to reduce the serious injury and mortality of harbor porpoises in gillnet gear. The MMPA directs take reduction teams to submit recommendations to NMFS to immediately reduce bycatch to below PBR within six months and to achieve the long-term goal of reducing bycatch to insignificant levels approaching a zero mortality and serious injury rate. As stated in Section 118(f)(6)(D) of the MMPA, take reduction teams are not subject to the Federal Advisory Committee Act and are open to the public.

NMFS published a notice in the **Federal Register** on February 12, 1996 (61 FR 5384), establishing the Gulf of Maine Harbor Porpoise Take Reduction Team (GOMTRT) and announcing the first GOMTRT meeting. The GOMTRT included representatives of the Northeast sink gillnet fishery, state fishery management agencies, the Northeast Fishery Management Council (NEFMC), the Atlantic States Marine Fisheries Commission (ASMFC), environmental organizations, academic and scientific organizations, and NMFS. The GOMTRT met five times between February and July 1996 before producing a consensus draft TRP that was submitted to NMFS on August 8, 1996. Additionally, the GOMTRT convened with the understanding that a separate take reduction team would be formed to address harbor porpoise bycatch in the Mid-Atlantic region.

In February 1997, NMFS established the Mid-Atlantic Harbor Porpoise Take Reduction Team (MATRT) to address the incidental serious injury and mortality of harbor porpoises in Mid-Atlantic gillnet fisheries from New York through North Carolina (62 FR 8428, February 25, 1997). The MATRT included representatives of the Mid-Atlantic coastal gillnet fisheries, state fishery management agencies, the Mid-Atlantic Fishery Management Council (MAFMC), the NEFMC, the ASMFC, environmental organizations, academic and scientific organizations, and NMFS. The MATRT submitted a report to NMFS on August 25, 1997, which included both consensus and non-consensus recommendations.

On September 11, 1998, NMFS published a proposed rule (63 FR 48670) to implement the HPTRP, which included both GOMTRT and MATRT recommendations. A final rule implementing the HPTRP to reduce serious injury and mortality of harbor porpoise in both the Gulf of Maine and Mid-Atlantic was published on

December 2, 1998 (63 FR 66464). Shortly following, a correction notice was published to remedy incorrect management area coordinates that were published in the final rule (63 FR 71041, December 23, 1998). On January 11, 2001, NMFS published a final rule (66 FR 2336) amending the HPTRP by exempting Delaware Bay from HPTRP regulations landward of the 72 COLREGS demarcation line.

The current HPTRP regulations are separated into two components—Gulf of Maine (GOM) and Mid-Atlantic. Among other measures, the GOM component regulates sink gillnet gear or gillnet gear capable of catching multispecies through time and area regulations from Maine to Rhode Island during the months of August through May. In four of the six GOM management areas, measures include seasonal gillnet closures during the months of the year when harbor porpoises are most concentrated in these areas. During several other times of the year, the HPTRP management areas require the use of acoustic deterrent devices (pingers) on sink gillnet gear.

The Mid-Atlantic component of the HPTRP regulates gillnet fishing in three management areas through time and area regulations from New York through North Carolina from January through April. In lieu of pinger requirements, the Mid-Atlantic component of the HPTRP established large and small mesh gear specification requirements in which fishermen set gear that is less likely to result in harbor porpoise entanglement. Large mesh gillnets include gillnets with a mesh size of seven to 18 inches (18–46 cm) and small mesh gillnets include gillnets with a mesh size of greater than five to less than seven inches (>13–<18 cm). Gear specification requirements for Mid-Atlantic gillnets include measures specifying a net limit per net string, twine size, net size, number of nets per vessel, and tie-down provisions. The three management areas of the Mid-Atlantic component of the HPTRP also include seasonal gillnet closures to coincide with high abundances of harbor porpoises.

Along with implementation of the HPTRP, regulations implementing restrictions developed under various Fishery Management Plans (FMP) have closed areas to gillnetting and reduced or constrained effort in groundfish, monkfish, and dogfish gillnet fisheries.

Need for Additional Action

After implementation of the HPTRP in late 1998, the annual average harbor porpoise bycatch decreased from a high of 1,500 animals per year prior to implementation of the HPTRP to a low of 310 animals per year (Waring *et al.,* 2004). This was below the stock's PBR level, which increased from 483 to 747 animals as reported in the 2001 Stock Assessment Report (Waring *et al.,* 2001).

Up to the 2006 Stock Assessment Report, harbor porpoise serious injury and mortality levels remained below PBR, with a mean annual mortality of 515 animals per year between 2000 and 2004 (Waring *et al.,* 2007b). Although the HPTRP regulations achieved the immediate goal of reducing harbor porpoise bycatch to levels below PBR, these regulations did not achieve the long-term goal of reducing bycatch to insignificant levels approaching a zero mortality and serious injury rate (referred to as the zero mortality rate goal or ZMRG), as required under the MMPA. NMFS defined this insignificance threshold as ten percent of a stock's PBR (50 CFR 229.2). Instead, the yearly observed takes and estimated mortality rates have shown an increasing trend rather than a decreasing trend to bycatch levels approaching the insignificance threshold.

The most recent estimates indicate that, when calculating the average estimated mortality for the period between 2001 and 2005, bycatch exceeded PBR. The 2007 Stock Assessment Report indicates that the current annual estimated harbor porpoise incidental bycatch of 652 animals per year exceeds the current PBR of 610 animals (Waring *et al.,* 2007a). Of the 652 takes, 475 are attributed to the Northeast sink gillnet fishery and 177 to the Mid-Atlantic gillnet fishery.

After preliminary discussions, NMFS originally believed the recent increase in harbor porpoise bycatch was the result of a lack of compliance with the HPTRP requirements. In New England, compliance rates dropped precipitously between 2002 and 2003 (as indicated by the low percentage of observed hauls using the correct number of pingers per string when pingers were required), when fewer than 10 percent of the observed hauls were deployed with the proper number of pingers (Palka *et al.,* 2008). However, after reviewing more recent observer information depicting the locations of gillnet hauls in which harbor porpoise takes were recorded, NMFS concluded that the increase in harbor porpoise takes was a two-pronged problem. It not only involved non-compliance with the current HPTRP requirements, but also involved observed harbor porpoise takes occurring outside of existing HPTRP management areas. These data prompted NMFS to initiate a targeted HPTRP outreach effort in the fall of 2006. This effort included development of laminated outreach cards summarizing and graphically depicting the HPTRP management areas and requirements for New England and the Mid-Atlantic. In October 2006, the outreach cards and a laminated pinger training authorization were mailed to over 300 fishermen who had previously received pinger training. The pinger training authorization, when kept on board the vessel, allows gillnet fishing with pingers inside the HPTRP management areas and illustrates proper pinger placement.

A large component of the outreach effort involved commercial gillnet industry outreach meetings. Between October and November 2006, NMFS conducted a series of eight voluntary outreach meetings for commercial gillnet fishermen throughout New England from Maine through Rhode Island. The outreach meetings were intended to provide commercial gillnet fishermen with an update on the status of the HPTRP, summarize the existing HPTRP requirements for both New England and the Mid-Atlantic, and provide pinger training where necessary (New England only). The outreach meetings supplemented ongoing efforts by NMFS gear specialists to train local and Federal enforcement personnel. As such, where possible, NMFS and U.S. Coast Guard (USCG) enforcement agents also attended the outreach meetings.

In the fall of 2006, while the outreach meetings were ongoing, an increase in compliance was already evident. Through May 2007, compliance in 2007 increased to nearly 60 percent.

In addition to conducting outreach to gillnet fishermen, NMFS participated in enforcement cruises with state enforcement personnel in Massachusetts and Rhode Island. NMFS held a number of joint meetings with local law enforcement personnel, including eight presentations made in New England between 2003 and 2008. Beginning in 2005, the US Coast Guard (USCG) increased patrols in HPTRP management areas in the Gulf of Maine. During March of 2006, the Massachusetts Environmental Police joined the USCG in their patrols. Increased patrols continued into 2007. In the Mid-Atlantic, NMFS gear specialists held two meetings (in 2003 and 2005) with the Atlantic States Marine Fisheries Commission's Law Enforcement Committee to review the current requirements of the HPTRP.

Outreach and enforcement efforts alone, however, did not address the increased bycatch of harbor porpoises

occurring outside of the existing HPTRP management areas, where harbor porpoise bycatch reduction measures are not in place. Consequently, NMFS determined that it was necessary to reconvene the Harbor Porpoise Take Reduction Team (HPTRT).

HPTRT Reconvened

The HPTRP utilizes two harbor porpoise take reduction teams (TRT), the Gulf of Maine and Mid-Atlantic TRTs, to address the incidental serious injury and mortality of harbor porpoises that result from incidental interactions with gillnet fisheries. Specifically, the TRTs were charged with developing conservation strategies to reduce the incidental serious injury and mortality of harbor porpoises to levels below the PBR level and approaching ZMRG. The GOMTRT was charged with reducing the serious injury and mortality of harbor porpoises that result from incidental interactions with gillnet fisheries from Maine to Rhode Island, while the MATRT addressed the serious injury and mortality of harbor porpoises that result from incidental interactions with gillnet fisheries from New York through North Carolina. The TRTs were each last convened in 2000 to discuss harbor porpoise/fisheries interactions and potential mitigation measures on a regional level.

However, to address the recent increase in harbor porpoise bycatch, NMFS decided to combine the two TRTs and hold one full HPTRT meeting for three reasons. First, since it had been nearly eight years since either TRT had met, the updated stock abundance and bycatch information presented would be pertinent to both TRTs. Additionally, some members had served on both the GOMTRT and MATRT, and would receive redundant information if two separate meetings were held. Finally, holding one full HPTRT meeting could more efficiently utilize limited resources.

The HPTRT was reconvened for a meeting in December 2007, and a follow-up teleconference meeting was held on January 31, 2008. The proposed modifications to the HPTRP, as well as the other alternatives considered within the draft Environmental Assessment (EA) that accompanies this proposed rule, were developed through these consultations with the HPTRT to reduce mortality and serious injury of harbor porpoises in the Northeast and Mid-Atlantic gillnet fisheries to levels below PBR and approaching ZMRG.

Review of Gulf of Maine Harbor Porpoise Bycatch Information

In preparation for the HPTRT December 2007 meeting, NMFS analyzed observer data from January 1, 1999, through May 31, 2007 from different geographic areas to identify patterns in the overall increase in harbor porpoise bycatch in the New England and Mid-Atlantic areas and to identify any trends in compliance with HPTRP requirements. NMFS also identified a number of issues contributing to the observed increase in harbor porpoise takes, primarily poor compliance with existing measures and increased bycatch outside of existing management areas.

In the Gulf of Maine region, observed harbor porpoise takes from January 1, 1999, through May 31, 2007, occurred during all months of the year (although the bycatch rates were very low during the summer months) in gear targeting a variety of fish species, including American cod, monkfish, pollock, yellowtail flounder, spiny dogfish, unknown groundfish, and other flounders (Palka *et al.,* 2008). The highest bycatch rates were observed in the Western Gulf of Maine Closure Area (a Northeast Multispecies FMP year-round closure) and in the HPTRP Mid-Coast Management Area (from this point forward, the HPTRP areas will be termed ''management areas'' rather than ''closure areas'' unless the area exists solely as a closure). A relatively high bycatch rate (0.040 harbor porpoise takes per metric tons [mtons] landed) was also observed in the currently unregulated Stellwagen Bank Management Area (proposed as a new management area in this proposed rule). Bycatch rates were highest during the following five months, with the rates listed in order from highest to lowest: November, February, December, April, and March (Palka *et al.,* 2008). More specifically, the highest bycatch rates were found in the Massachusetts Bay and Mid-Coast Management Areas during March, the Multispecies FMP Western Gulf of Maine Closure Area and proposed Stellwagen Bank Management Area during February, and the Multispecies FMP Western Gulf of Maine Closure Area and the Massachusetts Bay, Mid-Coast, and proposed Stellwagen Bank Management Areas during November and December (Palka *et al.,* 2008). Notably, the Massachusetts Bay Management Area had a high bycatch rate in the month of November (0.052 harbor porpoise takes/mtons), despite its being closed to gillnet fishing during October and November through the Northeast Multispecies FMP Rolling Closure Area V restrictions (Palka *et al.,* 2008). These data indicate non-compliance with the current HPTRP requirements, demonstrated through high bycatch rates in the Massachusetts Bay and Mid-Coast Management Areas, as well as takes occurring outside existing management areas, demonstrated through seasonally high bycatch rates in the proposed Stellwagen Bank Management Area. It also demonstrates takes occurring within the year-round Western Gulf of Maine Closure Area under the Multispecies FMP.

In the Gulf of Maine region from January 1, 1999, through May 31, 2007, the number of vessels using at least 90 percent of the required number of pingers in times and areas when pingers were required varied throughout the time period examined. Approximately 75 percent of observed vessels used the proper number of pingers in 1999, which was the first year that the HPTRP requirements were in effect. This number dropped to a low of 10 percent in 2003 and 2004, and rose again to about 60 percent between January and May of 2007 (Palka *et al.,* 2008), possibly as a result of the NMFS targeted outreach efforts in the fall of 2006.

In the New England waters south of Cape Cod (which refers to waters within the Cape Cod South Management Area and waters surrounding this management area), all observed takes from January 1, 1999, through May 31, 2007, occurred during the months of December to May in gear targeting monkfish or winter skate (Palka *et al.,* 2008). The data show an increasing rate of harbor porpoise bycatch in this area between 1999 and 2007, with rates in 2007 (only January through May are included) being the highest. The overall average bycatch rate in this region during this time period was 0.089 harbor porpoise takes/mtons landed. Bycatch rates were highest from February through May, and lowest in December. The bycatch rate in the area south of the Cape Cod South Management Area, which is not currently regulated under the HPTRP, was about 50 percent higher than the bycatch rate observed in the Cape Cod South Management Area itself, where pingers and closures are seasonally required (Palka *et al.,* 2008). Most of the harbor porpoise bycatch occurred in the area south of the Cape Cod South Management Area (from the southern boundary of this management area at 40°40′ N. lat. south to 40°00′ N. lat., and east to 70°00′ W. long.) in which pingers are not required.

Of the 1,665 hauls observed in the Cape Cod South Management Area

during the period and season that pingers are required from January 1, 1999, through May 31, 2007, 47 percent were deployed with 90 percent or more of the required number of pingers. Forty percent did not have any pingers, and the remaining 13 percent had fewer than 90 percent of the required number of pingers (Palka *et al.,* 2008).

Review of Mid-Atlantic Harbor Porpoise Bycatch Information

In the Waters off New Jersey Management Area, the majority of the observed takes from January 1, 1999, through May 31, 2007, occurred in the Hudson Canyon area in or near the existing Mudhole Management Area, and all occurred in monkfish large mesh gillnet gear from January through April (Palka *et al.,* 2008). During this time, the bycatch rate was 0.233 harbor porpoise takes/mtons landed (Palka *et al.,* 2008). A number of factors appeared to correlate well with increased bycatch rates. Net strings that were greater than 4,000 ft (1,219 m) in total length entangled harbor porpoises three times more often than net strings that were less than 4,000 ft (1,219 m) in total length. All of the harbor porpoise takes occurred in nets with soak times that were greater than 48 hours, even though 37 percent of the observed hauls and 19 percent of the landings were from nets that had soaked for fewer than 48 hours. Nets hauled after more than one week had a bycatch rate five times higher than hauls of nets that soaked for one week (Palka *et al.,* 2008).

Exceeding the allowable net string length—3,900 ft (1,189 m) in the Mudhole Management Area and 4,800 ft (1,463 m) in the Waters off New Jersey Management Area—was the most common occurrence of non-compliance recorded from the Waters off New Jersey Management Area. This was determined by examining the gear characteristics of gillnets with observed harbor porpoise takes. Most of the observed hauls of large mesh nets were out of compliance with at least one of the gear restrictions of the HPTRP, and a majority of harbor porpoise takes occurred in gear that was out of compliance with the HPTRP (Palka *et al.,* 2008). Observer effort for large mesh gillnet hauls in the Waters off New Jersey and Mudhole Management Areas was very low in some years (especially from 2000 through 2003). However, it appears that compliance rates for the Waters off New Jersey Management Area show a pattern similar to that seen in New England. Compliance rates decreased rapidly after the first few years of the HPTRP implementation, and increased in 2007 after HPTRP outreach occurred.

In the Southern Mid-Atlantic Waters, the eight harbor porpoise incidental takes between January 1, 1999, and May 31, 2007, occurred in February, March, or April, the period in which the HPTRP is in effect in these waters (Palka *et al.,* 2008). Half of the observed takes occurred in the shad fine mesh gillnet fishery (mesh size ≤5 inches [13 cm]), which has since been closed. The four other observed takes occurred in large mesh hauls targeting monkfish or striped bass and all four were out of compliance with the HPTRP. Only 21 percent of all the large mesh hauls observed in this area were fishing in compliance with the current HPTRP regulations and no takes were observed in these hauls. Hauls that were out of compliance used twine sizes that were too small, did not use tie-downs, and/or occurred during the February 15 through March 15 large mesh closure period. No takes were observed in small mesh nets, although 35 percent of these nets were out of compliance, primarily with the HPTRP twine size requirement (Palka *et al.,* 2008).

HPTRT Recommendations

During the December 2007 meeting, the HPTRT considered and discussed harbor porpoise bycatch and HPTRP compliance information, as well as other information contained within the meeting materials provided. NMFS provided the HPTRT with information about harbor porpoise takes in the Gulf of Maine, southern New England, and Mid-Atlantic areas. The bycatch information was based on observed harbor porpoise injuries and mortalities that occurred after the HPTRP was implemented (January 1, 1999, through May 31, 2007). Details on the locations and timing of observed takes were presented to assist HPTRT discussions.

The follow-up January 2008 meeting (via teleconference) focused on those items that lacked consensus, required clarification, and would benefit from reconfirming the recommended approach. At both meetings, the HPTRT took a regional approach to discussing the information presented, and based their recommendations on the best available information that was presented. For certain topics, NMFS completed additional analyses after the meetings, if needed, and presented the information for consideration by the HPTRT. The HPTRT's recommendations, summarized below, are described in more detail in the draft EA that accompanies this proposed rule.

Recommendations for the Southern New England Region

For the southern New England area, the HPTRT examined the harbor porpoise bycatch information; locations of observed takes occurred primarily within and south of the Cape Cod South Management Area, as well as to the east of Cape Cod, Massachusetts. The HPTRT recommended the creation of a new management area (termed the Southern New England Management Area, which is proposed as a new management area in this proposed rule), which is a large area located to the south and east of Cape Cod. The HPTRT recommended adding the area east of Cape Cod to this area to address harbor porpoise bycatch within the waters east of Cape Cod. The HPTRT discussed the possibility of creating a new management area solely for the waters east of Cape Cod. However, the bycatch analysis indicated that the harbor porpoise bycatch occurred during the same season as the bycatch occurring in the Cape Cod South Management Area and the area to its south. Therefore, the HPTRT recommended that the waters to the east of Cape Cod be incorporated into the Southern New England Management Area. In this area, the HPTRT recommended that pingers be required from December through May, which coincides with the seasonality of the Cape Cod South Management Area, and would be absorbed by this larger area.

During the December 2007 meeting, the HPTRT discussed possible ways of reducing harbor porpoise takes that are occurring within existing HPTRP management areas. Rather than recommending an immediate closure of current HPTRP management areas due to poor pinger compliance in the past, the HPTRT recommended a management strategy that would establish ''consequence'' closure areas. Consequence closure areas are specified areas of high harbor porpoise bycatch that would become seasonally closed if the observed average bycatch rates over two consecutive management seasons indicate that harbor porpoise exceed a specified target bycatch rate. The HPTRT's rationale for recommending consequence closure areas is to decrease harbor porpoise bycatch within HPTRP management areas by increasing compliance with the HPTRP through targeted outreach and education efforts.

The consequence closure area concept was first recommended by the HPTRT for the region south of Cape Cod. Harbor porpoise takes in commercial gillnet gear have been observed seasonally within, as well as south of, the Cape

Cod South Management Area, and to the east of Cape Cod. The HPTRT recommended creating the Southern New England Management Area and requiring pingers there, but also needed to address consequences for non-compliance with the HPTRP pinger requirements. After some deliberation, the HPTRT recommended creating a consequence area that included the existing Cape Cod South Management Area as well as its expansion to the south (termed the Cape Cod South Expansion Consequence Closure Area, proposed management area in this proposed rule). This area is located entirely within the proposed Southern New England Management Area.

The HPTRT discussed the conditions under which the Cape Cod South Expansion Consequence Closure Area would become closed. For the seasonality of the closure, the HPTRT recommended that, once triggered, the area would be closed from February through April, as these three months had the highest bycatch rates of the months between December and May. From January 1, 1999, through May 31, 2007, the bycatch rate in the region south of Cape Cod in February was 0.160 harbor porpoise takes/mtons, 0.065 harbor porpoise takes/mtons in March, and 0.145 harbor porpoise takes/mtons in April (Palka *et al.,* 2008). The HPTRT also discussed the trigger mechanism by which the consequence area would close and recommended using the bycatch rate. Initially, a target bycatch rate of 0.03 harbor porpoise takes/mtons was agreed upon, which represents a bycatch rate with 90 percent pinger compliance. After further analysis after the meeting, NMFS determined that the bycatch rate reflecting 90 percent compliance with the pinger requirements in place for the entire Southern New England Management Area would be 0.023 harbor porpoise takes/mtons.

During the January 2008 meeting, the HPTRT recommended a second consequence closure area east of Cape Cod, termed the Eastern Cape Cod Consequence Closure Area. Establishing a consequence closure area here would provide an incentive for gillnet fishermen fishing east of Cape Cod to comply with the new seasonal pinger requirements established for the Southern New England Management Area, as the observed annual bycatch rates would be calculated for the entire Southern New England Management Area. The target bycatch rate and closure time period, if triggered, for the Eastern Cape Cod Consequence Closure Area would be the same as the Cape Cod South Expansion Closure Area. Therefore, if the target bycatch rate of 0.023 harbor porpoise takes/mtons for the Southern New England Management Area is exceeded after two consecutive management seasons (December through May), both the Cape Cod South Expansion Consequence Closure Area and the Eastern Cape Cod Consequence Closure Area would be closed to gillnet fishing each year from February through April.

HPTRT Recommendations for the Gulf of Maine Region

For the Gulf of Maine region, the HPTRT provided NMFS with a suite of consensus recommendations for reducing harbor porpoise bycatch and increasing compliance with the HPTRP in this region. These recommendations included: (1) Closing the currently unregulated Stellwagen Bank Management Area during February and require pingers in December and January; (2) expanding the pinger requirements in the Massachusetts Bay Management Area to include the month of November; (3) expanding the northeastern boundary of the Southern New England Management Area on the east side of Cape Cod and implementing targeted closures if allowable bycatch rates are exceeded; (4) codifying the Multispecies FMP year-round Western Gulf of Maine Closure Area under the HPTRP; (5) eliminating the Offshore Management Area; and (6) expanding efforts by states and others to foster and certify fishermen in the use of pingers as a method of reducing harbor porpoise bycatch.

During the December 2007 meeting, the HPTRT discussed non-compliance within existing HPTRP management areas in the Gulf of Maine, but did not discuss a consequence closure area strategy in this region, although implementing an immediate closure in the Mid-Coast Management Area was discussed. In the Gulf of Maine region, observed takes of harbor porpoises between January 1, 1999 and May 31, 2007, in the Mid-Coast Management Area (0.052 harbor porpoise takes/mtons), indicate a high bycatch rate and poor compliance with the seasonal pinger requirements (September 15 through May 31), particularly during the fall months and in the western half of the area (Palka *et al.,* 2008). Additionally, harbor porpoise takes in gillnet gear have been observed seasonally in the northern portion of the Massachusetts Bay Management Area and throughout the proposed Stellwagen Bank Management Area.

Prior to the January 2008 HPTRT meeting, the states of Maine, New Hampshire, and Massachusetts submitted a proposal to NMFS for review by the HPTRT for a suggested suite of conservation measures for the Gulf of Maine. The proposal included the use of a consequence closure area similar to the strategy employed for the Southern New England Management Area. The proposed area encompasses the entire Stellwagen Bank Management Area and portions of the Mid-Coast (west of 70°15′ W. long.) and Massachusetts Bay (north of 42°15′ N. lat.) Management Areas. This area, called the Coastal Gulf of Maine Consequence Closure Area, is bounded on the west by the coastlines of Maine, New Hampshire, and Massachusetts, on the south by 42°15′ N. lat., and on the east by 70°15′ W. long. If triggered, the timing of the consequence closure area was suggested as October and November annually, as these two months have a high bycatch rate in the Mid-Coast Management Area (0.066 and 0.121 harbor porpoise takes/mtons, respectively) (Palka *et al.,* 2008). The proposal was discussed during the January 2008 meeting and supported by the HPTRT and was recommended to NMFS.

The HPTRT recommended that the target bycatch rate for the Gulf of Maine region would be distinct from the bycatch rate that applies to the Southern New England Management Area to ensure that the bycatch rate applied is consistent with the broad area's past HPTRP compliance. It was not possible to calculate the target bycatch rate for the three Gulf of Maine management areas prior to the January 2008 meeting, and as such a target bycatch rate was not determined at that time. Following the meeting, NMFS calculated the target bycatch rate from observed compliant hauls, averaging the rates for the three management areas, and calculated an average rate of 0.031 harbor porpoise takes/mtons. Following the January 2008 meeting, those HPTRT members that responded to follow-up materials sent by NMFS recommended the use of this rate.

HPTRT Recommendations for the Mid-Atlantic Region

For the Mid-Atlantic region, HPTRT discussions during the December 2007 meeting centered on the high number of harbor porpoise takes occurring within the Waters off New Jersey Management Area. Many options were discussed for addressing the increased harbor porpoise bycatch within this area, including expanding or shifting the existing Mudhole Management Area to encompass the locations of observed harbor porpoise takes. As a result of the meeting, the HPTRT recommended

creating a new management area with an annual closure period for large and small mesh gillnet gear from February 1 through March 15.

Additionally, the HPTRT recommended a change to the gear modification requirements such that the tie-down spacing for large mesh gillnet gear would be increased from the current 15 ft (4.6 m) to no more than 24 ft (7.3 m) apart along the floatline. This change would not affect the profile of gillnets in the water column and thus not increase harbor porpoise bycatch.

The HPTRT also recommended a number of non-regulatory measures, mostly related to compliance monitoring and education/outreach efforts, which is discussed in further detail later in the preamble.

Other HPTRT Consensus Recommendations

In addition to the discussions focusing on potential new conservation measures for New England and Mid-Atlantic gillnet fisheries, the HPTRT also emphasized the necessity of a scientific research provision within the HPTRP. At the December 2007 meeting, NMFS provided a description of a suggested scientific research component that could be added to the HPTRP that would allow research within the HPTRP management areas provided researchers obtain a scientific research permit. The HPTRT recommended including this provision in the HPTRP. Additionally, NMFS provided a description of technical corrections, clarifications, and other modifications to the HPTRT at its December 2007 meeting. By consensus, the HPTRT recommended the adoption of these corrections, clarifications, and other modifications with little discussion.

Preferred Alternative for Modifications to the HPTRP

As a result of HPTRT discussions and recommendations provided to NMFS after the two HPTRT meetings (December 2007 and January 2008), NMFS developed and analyzed five alternatives in the draft EA, including a ''No Action'' or status quo alternative, to modify the HPTRP.

All five of the alternatives are described and analyzed in the draft EA prepared to accompany this proposed rule (NMFS, 2009). The array of alternatives developed for the draft EA include many of the concepts and strategies discussed by the HPTRT. Out of the five alternatives considered, NMFS has identified one Preferred Alternative (Alternative 4, the proposed action) for amending the HPTRP. Although one alternative has been identified as the preferred, NMFS is seeking comments on all of the alternatives. NMFS proposes to implement the preferred alternative.

The Preferred Alternative described in this proposed rule is intended to address the bycatch of the GOM/BOF stock of harbor porpoises that is currently above the PBR level in New England and Mid-Atlantic waters. The Preferred Alternative further pursues the conservation goals established by the MMPA to reduce harbor porpoise bycatch to below the PBR, approaching insignificant levels.

The Preferred Alternative includes a suite of measures for both New England and the Mid-Atlantic. Many of the proposed modifications described in this rule are a result of consensus recommendations made by the HPTRT during their two recent meetings. For New England, NMFS proposes expanding seasonal and temporal requirements in current HPTRP management areas, incorporating additional management areas, and establishing ''consequence'' closure areas should a specified target bycatch rate be exceeded by the observed average bycatch rate in certain management areas over the course of two consecutive management seasons. In the Mid-Atlantic, NMFS proposes establishing an additional management area and modifying the current tie-down requirement for large mesh gillnet gear. Additionally, NMFS is including a provision within both the New England and Mid-Atlantic regulations to allow research to be conducted within the HPTRP management areas when the research is authorized through a NMFS scientific research permit. Also, since finalizing the HPTRP in December 1998 (63 FR 66464, December 2, 1998), NMFS has identified a number of necessary technical corrections to the regulations. Finally, in some sections of the current HPTRP regulatory text there are ambiguities that need clarification. As such, this proposed rule addresses these corrections, clarifications, and other necessary modifications.

New England Component

In the New England component of the HPTRP, NMFS proposes to include a suite of conservation measures to augment the existing HPTRP to reduce the serious injury and mortality of harbor porpoises to levels below PBR (Figure 1). In three existing HPTRP management areas, modifications are not warranted because the most recent harbor porpoise bycatch data indicate that existing measures are sufficient. Management areas for which modifications are not proposed include the Northeast Closure, Cashes Ledge Closure, and Offshore Management Areas.

Some occurrences of increased harbor porpoise bycatch are associated with areas that are not currently regulated under the HPTRP. However, bycatch is also documented within existing HPTRP management areas. In select HPTRP management areas, the proposed action expands the areas and seasons during which pingers are required. These areas and seasons correspond to the locations and times of recently observed harbor porpoise serious injuries and mortalities from interactions with commercial gillnet gear. This proposed action would also incorporate the concept of ''consequence'' closure areas.

In southern New England, observed interactions between harbor porpoises and gillnet gear have been occurring in a currently unregulated area south of the existing Cape Cod South Management Area, as well as within this management area. To address this, the proposed action would establish the Southern New England Management Area, in which pingers would be required seasonally in a large area to the south and east of Cape Cod, Massachusetts from December through May (Figure 1). This area would include all waters in which harbor porpoise bycatch was observed (generally from the Cape Cod South Management Area south to 40° 00′ N. lat.), as well as sufficient surrounding waters to prevent potential future shifts in fishing effort to nearby areas where takes would likely occur.

In the Gulf of Maine, harbor porpoise takes have been observed in the unregulated area between the HPTRP Massachusetts Bay Management Area and the Northeast Multispecies FMP Western Gulf of Maine Closure Area (year-round closure) between December and May. As such, this area, termed the Stellwagen Bank Management Area, would be created under the HPTRP as a pinger management area from November through May (Figure 1). The HPTRT's recommendation on the management strategy for this area differs from the proposed conservation measures for this area in this proposed rule. The proposal drafted by the states of Maine, New Hampshire, and Massachusetts suggested requiring pingers from December through May in this area, similar to the Massachusetts Bay Management Area, without including the March gillnet closure. The states believed that new pinger requirements in a currently unregulated area should sufficiently reduce harbor porpoise takes, and that an immediate gillnet closure was not warranted at this time. Although the proposal received

strong support from the HPTRT, NMFS is proposing in this action a the seasonal period for pinger requirements in the Stellwagen Bank Management Area that includes November for consistency with the proposed addition of November to the pinger requirements in the Massachusetts Bay Management Area.

NMFS proposes to amend the seasonal requirements in the Massachusetts Bay Management Area to include the month of November. Currently, pingers are required in the Massachusetts Bay Management Area from December through May, with the exception of March, during which time gillnet fishing is prohibited. The March closure is in place due to the high abundance of harbor porpoises in the area during this time. Pingers are required during the months before and after the closure to further reduce harbor porpoise bycatch and to reduce the likelihood of harbor porpoises habituating to the sound of pingers.

One of the Massachusetts Bay Management Area's latitudinal boundaries, located at 42°12′ N. lat., leaves a small gap of unregulated waters between it and the southern boundary of the Northeast Multispecies FMP Western Gulf of Maine Closure Area, which is bounded on the south by 42°15′ N. lat. This proposed rule would modify the Massachusetts Bay Management Area to move this boundary north to 42°15′ N. lat. to eliminate the small gap of unregulated waters (Figure 1).

In addition to focusing on harbor porpoise bycatch located in unregulated waters, this proposed rule would address harbor porpoise takes that are occurring within existing HPTRP management areas through the HPTRT-recommended consequence closure area concept. Although pinger compliance was high after implementation of the HPTRP in 1998 (63 FR 66464, December 2, 1998), since that time compliance with pinger requirements in New England has declined. With increased outreach and enforcement efforts beginning in the fall of 2006, observer information indicated that compliance began to rise again, as evidenced through a calculation of the percentage of observed gillnet hauls that used the correct number of pingers per gillnet string in management areas when pingers were required.

In New England, NMFS is proposing three consequence areas that are based on the recommendations provided by the HPTRT: Two in southern New England and one in the Gulf of Maine (Figure 2). The Cape Cod South Expansion and East of Cape Cod Consequence Closure Areas would be triggered if the observed average bycatch rate in the Southern New England Management Area exceeded the target bycatch rate of 0.023 harbor porpoise takes/mtons after two consecutive management seasons (December through May), and would be closed annually to gillnet fishing from February through April. When the consequence closure areas are not closed (December, January, and May), the seasonal pinger requirements of the Southern New England Management Area would remain in effect. The Coastal Gulf of Maine Consequence Closure Area would be triggered if the observed average bycatch rates in the Mid-Coast, Stellwagen Bank, and Massachusetts Bay Management Areas (combined) exceeded the target bycatch rate of 0.031 harbor porpoise takes/mtons after two consecutive management seasons (September 15 through May 31 for the Mid-Coast Management Area, and November 1 through May 31 for the Stellwagen Bank and Massachusetts Bay Management Areas), and would be closed annually to gillnet fishing in October and November. When this area is not closed, the seasonal requirements of the three management areas would remain in effect, including the March gillnet closure in the Massachusetts Bay Management Area.

If any of the consequence closure areas are triggered, they would remain in effect until bycatch levels approach a zero mortality and serious injury rate or until the HPTRT and NMFS develop and implement new conservation measures. If the consequence closure areas are not triggered after the first two management seasons have elapsed, NMFS will continue to monitor the observed bycatch rates in these management areas and adopt a rolling trigger in which the most recent two years of bycatch information would be averaged and compared on an annual basis to the specified bycatch rates for each management area.

All impacts of the consequence closure areas have been evaluated in the draft EA. If it is necessary to establish the consequence closure areas in the future based on the most recent two years of observed harbor porpoise bycatch data, NMFS would establish the appropriate consequence closure areas via appropriate rulemaking in the **Federal Register**.

Mid-Atlantic Component

To address the high harbor porpoise bycatch in the Mid-Atlantic region, this proposed rule would create an additional management area within the Waters off New Jersey Management Area, which would include more stringent gear restrictions and a closure period (Figure 3). This additional management area is located to the south and east of the current Mudhole Management Area and would encompass many of the recently observed harbor porpoise takes occurring in that region. The proposed management area would be named the Mudhole South Management Area, and the current Mudhole Management Area would be renamed the Mudhole North Management Area. The more stringent gear modification requirements already in effect in the Mudhole North Management Area would also be in effect in the Mudhole South Management Area from January 1 through January 30 and from March 16 through March 31. Also, the large mesh gillnet closure from April 1 through 20 would still apply.

Additionally, this proposed rule would increase the current tie-down spacing for large mesh gillnet gear from the required 15 ft (4.6 m) to no more than 24 ft (7.3 m) apart along the floatline. This change would not affect the profile of gillnets in the water column and thus not increase harbor porpoise bycatch.

Scientific Research

Currently, the HPTRP regulations make no exemption for scientific research on methods for reducing harbor porpoise bycatch in the HPTRP management areas when the seasonal area requirements are in effect. Since the publication of the HPTRP in 1998 (63 FR 66464, December 2, 1998), subsequent HPTRT meeting recommendations have urged NMFS to promote the advancement of harbor porpoise bycatch reduction research in New England and Mid-Atlantic areas. To better facilitate scientific research on harbor porpoise bycatch reduction, this proposed rule includes a scientific research component to the HPTRP regulations. The proposed modification includes a provision that would allow scientific research on gear and/or fishing practice modifications for reducing harbor porpoise takes to be conducted within the HPTRP management areas during the times the seasonal requirements are in effect so long as the research is authorized through a scientific research permit granted under the MMPA. A scientific research permit would be obtained through the existing permit application process administered by NMFS. The scientific research permit application would be managed by NMFS in the same manner that it currently handles permit applications, which includes a regional review and public comment

period after publication of an announcement in the **Federal Register**.

Technical Corrections and Clarifications

Since finalizing the HPTRP in December 1998 (63 FR 66464, December 2, 1998), a number of technical errors in the HPTRP regulations have been identified. Furthermore, in some sections of the regulations there are ambiguities that need clarification. This proposed rule addresses these necessary corrections, clarifications, and other modifications, which would also ensure consistent and correct terminology for both the New England and Mid-Atlantic regulations.

In New England, HPTRP management areas are termed ''closure areas'' though some areas are not completely closed to gillnet fishing at any point during the year. This proposed rule would rename the HPTRP closure areas in both New England and the Mid-Atlantic ''management areas,'' except for areas that exist only as a complete closure (e.g., the Cashes Ledge Closure Area).

Currently, the regulatory text for the Mid-Coast Management Area requirements does not include an exemption for gillnets equipped with pingers as described in each of the other areas requiring pingers. This proposed rule would add text to clarify that gillnet fishing is allowed within this management area as long as pingers are used. Furthermore, this proposed rule would clarify the requirements for ''pinger attachment'' by including a statement specifying that pingers must be placed every 300 ft (91.4 m) for gillnets that exceed 300 ft (91.4 m) in length. Currently the pinger placement requirement only specifies that pingers must be placed at each end of the net string and at the bridle of each net.

The current eastern boundary of the Offshore Management Area crosses the boundary of the U.S. Exclusive Economic Zone (EEZ). This proposed rule would create three additional coordinates for the eastern edge of the Offshore Management Area so the boundary line follows along the boundary of the EEZ but does not cross it.

For the HPTRP regulations in the Mid-Atlantic, this proposed rule would clarify the number of nets per string allowed within the management areas for both large and small mesh gillnet gear. Currently, only the allowable net length (300 ft or 91.4 m) and floatline lengths are specified. The number of nets per string is implied by dividing the floatline length by the allowable net length, but is not clearly defined in the regulations. For example, the proposed modifications to the Mid-Atlantic regulations would clearly specify the net limit of 13 large mesh nets when fishing in the Waters off New Jersey Management Area. Also, in the final rule implementing the HPTRP (63 FR 66464, December 2, 1998), the definition for the Waters off New Jersey Management Area is inconsistent with the graphic depiction of the area, and is inconsistent with the ''regulated waters'' text. This proposed rule would remove the current northern boundary of the Waters off New Jersey Management Area, located at 40°40′ N. lat. and would extend the northern boundary to the southern shoreline of Long Island, NY at 40°50.1′ N. lat. and 72°30′ W. long.

For all HPTRP management areas with coordinates that intersect the shoreline, this proposed rule includes shoreline latitude/longitude coordinates to more clearly specify the boundaries of HPTRP management areas. Additionally, this proposed rule would clarify the geographical enclosure of the Offshore and Cashes Ledge Management Areas by repeating the first area coordinate as the last coordinate. In the Mudhole North Management Area, the current northwestern boundary does not intersect with the shoreline of New Jersey as stated in the current management area description. This proposed rule would correct the geographic boundary of the Mudhole North Management Area by incorporating a coordinate that intersects with the New Jersey shoreline at 40°28.1′ N. lat. and 74°00′ W. long.

The current southern boundary of the Southern Mid-Atlantic Management Area is the North Carolina/South Carolina border. It is currently defined as 33°51′ N. lat., but it does not accurately reflect the actual border. This proposed rule would modify the coordinate to ensure a more accurate reflection of the North Carolina/South Carolina border based on 50 CFR 622.2 (Fisheries of the Caribbean, Gulf, and South Atlantic—Definitions and Acronyms). The new border would be defined as the latitude line corresponding with 33°51.1′ N. lat.

This proposed rule would amend the HPTRP exempted waters in Virginia from Chincoteague to Ship Shoal Inlet to be consistent with the exempted waters for this area in the Atlantic Large Whale and the Bottlenose Dolphin Take Reduction Plans. Currently, the exempted area is landward of a line extending south from Chincoteague to Ship Shoal Inlet, and this line crosses the three nautical mile state waters line. The exempted waters in Virginia from Chincoteague to Ship Shoal Inlet would become the waters landward of the 72 COLREGS demarcation lines between these two inlets.

Finally, NMFS proposes to remove the net tagging requirement for large and small mesh gillnet gear in the Mid-Atlantic. A net tagging program was not implemented after the final HPTRP was published in late 1998 (63 FR 66464, December 2, 1998).

Monitoring HPTRP Effectiveness

NMFS identified a number of issues contributing to the observed increase in harbor porpoise takes, primarily poor compliance with existing measures and increased bycatch outside of existing management areas. To address these issues, NMFS has based this proposed action on recommendations provided by the HPTRT. To support the implementation of this action, NMFS will continue to work with various partners (e.g., USCG, NOAA Office of Law Enforcement, states, NMFS Northeast Fisheries Observer Program) to monitor compliance and to enforce the regulatory components of the HPTRP. NMFS recognizes that compliance with HPTRP requirements is critical to maximizing the effectiveness of the HPTRP. With this considered, NMFS is planning to increase HPTRP monitoring to correspond with the expansion of pinger requirements in New England. The expansion of management areas with pinger requirements will require some fishing vessels that have not been subject to the HPTRP pinger requirements to purchase pingers in order to continue fishing during times and in areas where pingers are required. The total pinger cost for materials and labor for vessels fishing in New England can range from $5,953 to $13,969 depending on the number of nets being fished. More discussion on the impacts of the proposed action can be found in the Classification section.

NMFS has the resources necessary to monitor and ensure compliance with the HPTRP. These resources include: observer information for calculating bycatch rates, continued enforcement efforts, and education/outreach. To assist in achieving this goal, NMFS has purchased pinger detector devices to monitor the presence of pingers on set gillnet gear during the times when pingers are required under the HPTRP. NMFS has coordinated with the states of Maine, Massachusetts, and Rhode Island by distributing pinger detectors to state enforcement personnel, providing them with the ability to monitor pinger compliance under the HPTRP. NMFS will continue to use this technology in conjunction with observer information

to continually monitor the level of pinger compliance in New England.

In addition, during their recent meetings, the HPTRT reached consensus on a number of non-regulatory components that NMFS will pursue outside of the rulemaking process. After a final rule has been published, NMFS will collaborate with the New England states of Maine, New Hampshire, Massachusetts, and Rhode Island to conduct annual workshops with gillnet fishermen to further compliance with the HPTRP regulations and to provide information on recent compliance and harbor porpoise bycatch data. The HPTRT state representatives also agreed to work within their state regulations to codify the HPTRP gear requirements in their individual state laws. This could potentially provide a mechanism for future increased joint enforcement efforts between the states and NMFS, and will provide an effective means for increasing compliance.

Additionally, NMFS supports the states' efforts to develop and implement an education and enforcement effort to increase HPTRP compliance. The HPTRT and NMFS agreed that it is critical to the success of these proposed conservation measures for members of the commercial gillnet fishing industry to thoroughly comprehend the mechanisms of the consequence closure areas should compliance continue to remain low in the Gulf of Maine and southern New England. The states may also explore the possibility of certifying commercial gillnet fishermen and their gear to further increase compliance, although the details of this were not considered during the HPTRT meetings. Finally, in an effort to monitor the HPTRP to determine if consequence closure area implementation is warranted, NMFS will provide the HPTRT members with annual compliance and bycatch information in New England based on observed harbor porpoise serious injuries and mortalities.

The HPTRT also reached consensus on a number of non-regulatory components targeting the Mid-Atlantic, which include collaborating with Mid-Atlantic states to conduct annual workshops with gillnet fishermen to attempt to increase compliance with the HPTRP regulations and to provide information on recent compliance and harbor porpoise bycatch data. Additionally, an analysis of observed harbor porpoise interactions with gillnet gear in the Mid-Atlantic indicated that increased soak times may lead to an increase in harbor porpoise bycatch (Palka *et al.,* 2008). NMFS supports Mid-Atlantic States' efforts to develop and implement an education and enforcement effort to increase compliance and to stress the need to reduce the soak times of gillnets, although this is not a required measure. The Mid-Atlantic States may also explore the possibility of certifying commercial gillnet fishermen and their gear to further increase compliance, although the details of this were not considered during the HPTRT meetings. Finally, in an effort to monitor the HPTRP, NMFS will keep the HPTRT members informed of annual compliance information in the Mid-Atlantic based on observed harbor porpoise serious injuries and mortalities.

Classification

The Office of Management and Budget (OMB) has determined that this action is significant for the purposes of Executive Order 12866.

If a member of the public requests a scientific research permit for conducting research with fishing gear within a HPTRP management area, an existing information collection requirement, approved under OMB Control No. 0648–0084, would apply. The public reporting burden for completing an application for a scientific research permit is estimated to average 32 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov,* or fax to (202) 395–7285. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

NMFS has prepared an initial regulatory flexibility analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and its legal basis are contained in the preamble of this proposed rule. This proposed rule does not include any reporting or recordkeeping requirements, or compliance requirements other than those described in the preamble. No duplicative, overlapping, or conflicting Federal rules have been identified. A summary of the analysis follows.

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Act size standards for small fishing businesses. The fisheries affected by this proposed rule are the Northeast sink gillnet and Mid-Atlantic gillnet fisheries. These fisheries are currently regulated under the HPTRP to reduce the serious injury and mortality of harbor porpoises, and the proposed action implements additional restrictions. The population of vessels affected by this proposed action includes all commercial gillnet vessels fishing in federal waters from the U.S./Canada border to North Carolina, as well as vessels fishing in state waters that are managed under the HPTRP.

The proposed action incorporates additional measures to the existing HPTRP. For New England (Maine through Rhode Island), new measures include (1) Additional pinger requirements, (2) the establishment of new management areas, and (3) the incorporation of consequence closure areas should the observed average bycatch rate in certain management areas exceed a specified target bycatch rate averaged over the course of two consecutive management seasons. For the Mid-Atlantic (New York through North Carolina), new measures include (1) the establishment of a new management area, which includes a seasonal closure, and (2) a modification to the large mesh gillnet tie-down spacing requirement (which is not included in the analysis because it would not incur additional costs to gillnet fishermen).

Other regulatory components, discussed above, are included within the new measures, such as the addition of a provision that would allow research within HPTRP management areas and incorporate technical clarifications and corrections where needed. None of these provisions contribute any additional costs to gillnet vessels regulated by the HPTRP and thus are not included in the analysis.

For the analysis of impacts, the data used are from calendar year 2006 to correspond to the last full year of data used in the harbor porpoise bycatch analysis described previously in the preamble. In 2006 and under the current HPTRP, there were 975 gillnet vessels that landed an estimated 23,276 metric tons, generating approximately $40,643,000 in revenue. NMFS uses a Closed Area Model to distribute an individual vessel's fishing effort over time and space, optimizing its distribution to maximize individual

profits. The model is able to account for possible changes in fishing effort based on regulation changes while predicting behavior that would maximize profits. These possible changes in effort are determined by a vessel's fishing history as well as the history of similar vessels that land in the same port. The model predicts the most profitable fishing choice based on the measures of the proposed actions outlined in this proposed rule.

In the event of an area closure to gillnet fishing, a vessel could choose not to fish at all or could fish in another location. Similarly, where management areas that require pingers are established, vessels that had previously fished in that area could either choose to purchase pingers and continue fishing in that area, or to not purchase pingers and move their fishing activities to areas that do not require pingers. Note that for the purposes of this analysis, vessels that had previously fished in areas that require pingers under the current HPTRP are assumed to already possess pingers and thus would not incur additional costs due to expanded pinger requirements in any of the alternatives.

Pinger costs are calculated as the cost per pinger unit, and include the cost of the pinger, batteries, and installation. The cost is based on the number of nets per vessel and therefore is calculated based on the maximum allowable number of nets. The total pinger cost for materials and labor for vessels fishing in New England or the Mid-Atlantic can range from $5,953 to $13,969. Naturally, vessels with fewer nets have lower pinger costs.

The proposed action incorporates the potential for future closures. As such, the analysis examines four scenarios for the proposed action, based on the potential for implementation of consequence closure areas. The first scenario examines impacts of additional HPTRP conservation measures (e.g., establishment of new pinger and closure areas) prior to the trigger of any consequence closure area (Pre-closure). The second scenario examines the impacts if only the Coastal Gulf of Maine Consequence Closure Area is implemented (GOM-closure), and the third scenario analyzes the impacts if only the Cape Cod South Expansion and Eastern Cape Cod Consequence Closure Areas are implemented (SNE-closure). The fourth scenario investigates the impacts should all three consequence closure areas be implemented simultaneously, which would occur if both target bycatch rates are exceeded (GOM/SNE-closures).

(1) The Pre-closure scenario would have the smallest impact on the gillnet industry out of the four scenarios that are possible under this proposed action. The model assumes that for Gulf of Maine ports (Maine to South of Boston), 82 to 98 percent of these vessels already own pingers. Therefore, the expanded requirements for the use of pingers are not expected to result in significant impacts. The majority of the affected vessels under this scenario at the regional, or port, level originate from port groups East of Cape Cod to New Jersey due to the creation of the Southern New England Management Area with new pinger requirements and the Mudhole South Management Area, which incorporates a seasonal closure. In addition, the impact of the Pre-closure scenario in terms of landings is small. For the East of Cape Cod through New Jersey port groups, percent change in landings vary between a one percent increase (East of Cape Cod) and a one percent reduction. Percent reductions in revenues for these port groups range from a one to three percent reduction, with the highest (three percent) in the New York port group.

Revenues for affected vessels under the Pre-closure scenario vary for small vessels (less than 40 ft [12.2 m]), versus large vessels (40 ft [12.2 m] and greater). Revenues for small vessels would be reduced between one and six percent (approximately $800 to $4,700), where revenues for large vessels would be reduced between one and seven percent (approximately $2,600 to $7,200). At the industry (i.e., small entity) level, the Pre-closure scenario can be expected to affect 10 percent of gillnet vessels in the fleet, which is 101 vessels. This equates to less than one percent reduction in landings and revenues. Less than a one percent (6 metric tons) decline in industry landings is expected, which equates to an approximate $183,000 decrease in revenues.

(2) The GOM-closure scenario would implement the Coastal Gulf of Maine Consequence Closure Area as a result of non-compliance with the HPTRP in three Gulf of Maine management areas. As such, this scenario would most heavily affect Gulf of Maine port groups, which include Maine to South of Boston. At the regional level, the impact on port group landings varies by port group. The New Hampshire port group, demonstrating a 14 percent reduction in landings, and North of Boston port group, with a six percent decrease, would feel most of the impacts. Slight landings reductions would be apparent from South of Cape Cod through New Jersey due to the creation of the Southern New England and Mudhole South Management Areas. Percent reductions in revenues for these port groups would vary similarly to the percent reductions seen in landings, with the highest being an 11 percent reduction for the New Hampshire port group, a five percent reduction for the North of Boston port group, and a one percent reduction in each of four port groups, including Maine, South of Cape Cod, New York, and New Jersey.

Similar to the Pre-closure scenario, revenues for affected vessels under the GOM-closure scenario vary by vessel size class. For small vessels, revenues are reduced by less than one percent to 28 percent (approximately $160 to $26,400) and by less than one percent to four percent (approximately $160 to $7,800) for large vessels. At the industry level, approximately 17.5 percent of the gillnet fleet could be affected by the GOM-closure scenario, which equates to 171 vessels, most being from Gulf of Maine port groups. Under this scenario, a decrease of approximately two percent (466 metric tons) would be expected, amounting to a decline of approximately $815,000 in revenues.

(3) The SNE-closure scenario would implement two consequence closure areas resulting from non-compliance in the Southern New England Management Area: The Cape Cod South Expansion and Eastern Cape Cod Consequence Closure Areas. As such, the South of Cape Cod port group would be most heavily affected, as 64 percent of landings in this port group are caught in the Cape Cod South Expansion Consequence Closure Area. Reductions in landings for the South of Cape Cod port group could be as high as six percent. In addition, closure of the Eastern Cape Cod Consequence Closure Area would affect vessels originating from the East of Cape Cod port group, with an approximately two percent reduction in landings. Other affected port groups from New Hampshire through New Jersey could expect up to an approximately three percent reduction in landings. Percent reductions in revenues for these port groups vary similarly to the percent reductions seen in landings, with the highest reduction of ten percent in the South of Cape Cod port group.

The range of revenue reductions for affected vessels varies for small versus large vessels, with expected reductions of one to ten percent (approximately $1,300 to $8,100) for small vessels and reductions of one to 25 percent (approximately $1,500 to $15,300) for large vessels. At the industry level, approximately 21.1 percent of gillnet vessels could be affected, which equates to 206 vessels, with the largest group

being from the South of Cape Cod port group. Under this scenario, a decrease in landings of two percent (378 metric tons) could be expected, totaling approximately $1.2 million decline in revenues.

(4) The GOM/SNE-closure scenario would result from non-compliance in both the Gulf of Maine and Southern New England areas, and would trigger the closure of all three consequence closure areas. Port groups most heavily affected by this scenario include Gulf of Maine ports from Maine to South of Boston (resulting from implementation of the Coastal Gulf of Maine Consequence Closure Area) and the South of Cape Cod and East of Cape Cod port groups (resulting from implementation of the Cape Cod South Expansion and Eastern Cape Cod Consequence Closure Areas). The New Hampshire and South of Cape Cod port groups would experience the highest reductions in revenues, with 11 percent (approximately $293,000) and 10 percent (approximately $734,000) declines, respectively. Similar percent losses in landings for these port groups would also be expected.

As with the scenarios described previously, the range of revenue reductions for affected vessels varies for small versus large vessels, with expected reductions of two to 28 percent (approximately $2,600 to $26,400) for small vessels and reductions of one to 25 percent (approximately $1,500 to $15,300) for large vessels. At the industry level, approximately 29.7 percent of gillnet vessels could be affected, which equates to 290 vessels. Under this scenario, a decrease in landings of four percent (838 metric tons) can be expected. An approximately $2 million decrease in revenues per year could also be expected.

Clearly, the Pre-closure scenario has the least amount of annual impacts of the four proposed action scenarios considered because no consequence closure areas would be triggered. A cost-effectiveness analysis using a ten-year time horizon was conducted to examine the temporal differences in the impacts of the scenarios considered. Costs in future years were discounted at a rate of three percent because the future dollar does not have the same value as today's dollar. The discounted annual costs were summed to provide an estimate of the Present Value of Cost (PVC) over the ten-year time period. The total PVC does not change over the ten-year time period for scenarios that are fully implemented in the first year, such as the Pre-closure scenario if consequence closure areas are never triggered. For the other three scenarios that involve the triggering of consequence closure areas at any point during the ten-year time period after the third year of implementation of the final rule, the earlier the closure area is implemented, the higher the total PVC would be over the ten-year period. This occurs because a closure costs more than pinger requirements, so delaying the onset of a closure lowers the total cost.

Of the four proposed action scenarios examined, the Pre-closure scenario had the lowest PVC across the ten-year time period: $1,457,000 for each year, which means that no consequence closure areas are triggered during that time period. For the GOM-closure scenario, if the Coastal Gulf of Maine Consequence Closure Area were triggered in year three, the PVC would be $5,810,000. However, if it were triggered in year ten, the PVC would be $1,337,000. Similarly, for the SNE-closure scenario, a consequence closure area implemented in year three would cost $8,558,000, whereas it would cost $1,646,000 if implemented in year ten. Finally, for the GOM/SNE-closure scenario, a consequence area implemented in year three would have a PVC value of $13,585,000, whereas the PVC would be $2,211,000 if implemented in year ten. Therefore, of the four scenarios presented, the Pre-closure scenario is the most cost-effective overall. This demonstrates the necessity for immediate industry compliance with the HPTRP requirements in order to avoid the trigger of consequence closure areas and thus higher costs. If any or all of the consequence closure areas are triggered, it is more cost-effective if they are triggered later in the ten-year time period rather than sooner.

Besides the proposed action, NMFS examines four additional alternatives in the draft EA. All alternatives, which have related components, are analyzed and compared to Alternative 1 (No Action). They are compared here for their ability to reduce impacts on small entities, which is related to their cost-effectiveness, as well as their ability to reduce harbor porpoise bycatch.

Alternative 1, no action, maintains the status quo requirements under the HPTRP. As such, no additional costs are incurred by the gillnet fleet, as vessels that had previously fished in pinger management areas are assumed to already own pingers. Therefore, this alternative is the least costly of the five. While this alternative would result in the least impacts on small entities, for the reasons identified in the preamble, this alternative was rejected because the status quo HPTRP is no longer achieving the goals of the MMPA. As such, NMFS is required to take additional action to achieve its mandates under the MMPA.

Alternative 2, immediate closures, would immediately implement the Coastal Gulf of Maine, Cape Cod South Expansion, and Eastern Cape Cod Closure Areas (which are the same areas as the consequence closure areas described for the proposed action), in addition to the Mudhole South Management Area closure. Alternative 3, broad-scale seasonal pinger requirements, would immediately implement pinger requirements in New England and the Mid-Atlantic throughout much of the range of harbor porpoises. Alternative 4 (Preferred) is the proposed action described in this proposed rule. Alternative 5 would implement the components of Alternative 4 (Preferred) with additional modifications, including removal of the Offshore Management Area, incorporation of the Multispecies FMP Western Gulf of Maine Closure Area (year-round) under the HPTRP, and elimination of the February 15 to March 15 large mesh gillnet closure in the Southern Mid-Atlantic Management Area. Similar to Alternative 4, two scenarios were examined for Alternative 5: the first being prior to the trigger of any consequence closure areas (Alternative 5 Pre-closure scenario) and the second being after the trigger of all three consequence closure areas (Alternative 5 GOM/SNE closure scenario).

To estimate the cost-effectiveness of each alternative, the model requires an estimate of the reduction in harbor porpoise bycatch. To examine the biological effects of each of the five alternatives on harbor porpoises, the bycatch analyses discussed in the draft EA provide a minimum and maximum range of outcomes based on fishing effort and predicted bycatch rates. For the economic analyses, a harbor porpoise bycatch estimate is calculated for each alternative by applying the landings from the Closed Area Model to the time-area specific bycatch rate used to predict the maximum harbor porpoise bycatch. An ''economic bycatch'' estimate is determined by calculating the percent reduction in bycatch by region and season between Alternative 1 and each of the four scenarios of the proposed action and applying the percent reduction to the bycatch estimates (discussed in the draft EA). The economic bycatch estimates are sensitive to the assumptions used in the Closed Area Model as well as the model used to estimate bycatch rates. To summarize, the economic bycatch is another method of calculating a predicted harbor porpoise bycatch

estimate. In 2006, NMFS estimates that 1,063 harbor porpoises were incidentally taken in gillnet gear.

When calculating the economic bycatch, the alternatives would achieve a harbor porpoise bycatch reduction ranging from 54 to 64 percent, or a reduction of 573 to 673 animals (i.e., reducing bycatch from 1,063 animals taken in 2006, to a range of between 390 and 490 animals per year), which achieves an estimate that is below the current PBR of 610 animals. Besides Alternative 1, the ''no action'' alternative, which would not result in a reduction in harbor porpoise bycatch, Alternative 2 has the smallest reduction in harbor porpoise bycatch, at 54 percent or 573 fewer animals from the status quo 2006 estimate of 1,063 animals. A reduction of 573 animals would bring the total bycatch to 490 animals after implementation of this alternative. Under Alternative 4 (proposed action), the GOM-closure scenario and the GOM/SNE-closure scenario demonstrate similar reductions of 63 percent, with the GOM/SNE-closure scenario showing a slightly higher decline in the number of animals taken at 671, bringing the total bycatch for this alternative scenario to 392 animals.

If the five alternatives were ranked from smallest percent decline in bycatch (least favorable for harbor porpoises) to the highest percent decline (most favorable for harbor porpoises) based on their economic bycatch estimates, the order would be Alternative 2 (54 percent reduction), Alternative 5 Pre-closure scenario (59 percent reduction), Alternative 4 Pre-closure scenario (59 percent reduction), Alternative 4 SNE-closure scenario (60 percent reduction), Alternative 3 (60 percent reduction), Alternative 5 GOM/SNE-closure scenario (63 percent reduction), Alternative 4 GOM-closure scenario (63 percent reduction), and Alternative 4 GOM/SNE-closure scenario (63 percent reduction).

In conclusion, at the regional level, the impacts on the Maine, South of Boston, New Jersey, Virginia, and North Carolina ports are small (less than or equal to plus or minus 3 percent change from Alternative 1) for all the alternatives. From an industry perspective, Alternatives 2, 4 (GOM/SNE-closure scenario), and 5 (GOM/SNE-closure scenario) have the highest annual impacts on revenues whereas Alternatives 3, 4 Pre-closure, and 5 Pre-closure have the lowest annual impacts on revenues. The most cost-effective alternatives from a national perspective are Alternative 3 due to the initial cost of purchasing pingers, as well as Alternatives 4 and 5 when consequence closure areas are never triggered or are triggered very late in the ten-year time period. Alternative 2 would incur the highest cost of all the alternatives over the ten-year time horizon examined and would provide the least amount of harbor porpoise bycatch reduction of the five alternatives.

The alternatives can be compared on a cost-effectiveness basis where the costs include lost revenues and pinger costs for those that did not have pingers, and the unit of comparison is the cost per unit of bycatch reduction (dollars per animal) where the reductions in harbor porpoise bycatch differ between the alternatives. This is the most conservative measure of costs when a full cost-benefits analysis cannot be completed. If the five alternatives were ranked from those with the least impact on small entities to those with the most impact based on the costs incurred per animal, the order would be: Alternative 5 Pre-closure scenario ($45 per animal), Alternative 4 Pre-closure scenario ($124 per animal), Alternative 3 ($162 per animal), Alternative 4 GOM-closure scenario ($882 per animal), Alternative 4 SNE-closure scenario ($1,341 per animal), Alternative 5 GOM/SNE-closure scenario ($1,973 per animal), Alternative 4 GOM/SNE-closure scenario ($2,054 per animal), and Alternative 2 ($2,985 per animal). The discounted costs summed over the ten-year time horizon (known as the present value of costs) would not change for Alternatives 2, 3, 4 Pre-closure, and 5 Pre-closure. These costs, however, would decrease over the ten-year time horizon should consequence closure areas be implemented in the future under the closure scenarios for Alternatives 4 (Preferred) and 5.

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List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: July 14, 2009.

Samuel D. Rauch III,

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

For the reasons stated in the preamble, 50 CFR part 229 is proposed to be amended as follows to implement the Preferred Alternative:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

§ 229.2 [Amended]

2. In § 229.2, the definitions of ''Mudhole'', ''Southern Mid-Atlantic waters'', and ''Waters off New Jersey'' are removed.

3. In § 229.3, paragraphs (q) and (r) are removed, and paragraphs (m), (n), (o), and (p) are revised to read as follows:

§ 229.3 Prohibitions.

* * * * *

(m) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the areas and for the times specified in § 229.33(a), unless the vessel owner or operator complies with closure or pinger provisions specified in § 229.33(a)(1) through (8). This prohibition does not apply to the use of a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(n) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove gillnet gear from the areas and for the times as specified in § 229.34(b)(1)(i), (b)(2)(i), (b)(3)(i), or (b)(4)(i).

(o) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh or small mesh gillnet gear from the areas and for the times specified in § 229.34(b) unless the gear complies with the specified gear restrictions set forth in the provisions of paragraphs (b)(1)(ii) or (iii), (b)(2)(ii) or (iii), (b)(3)(ii) or (iii), or (b)(4)(ii) or (iii).

(p) It is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in areas where pingers are required, as specified under § 229.33 (a)(2) through (5) and (a)(7), unless the operator on board the vessel during fishing operations possesses and retains on board the vessel a valid pinger training authorization issued by NMFS as specified under § 229.33(c).

* * * * *

4. Section 229.33 is revised to read as follows:

§ 229.33 Harbor Porpoise Take Reduction Plan Regulations—New England.

(a) *Restrictions*—(1) *Northeast Closure Area*—(i) *Area restrictions.* From August 15 through September 13, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Northeast Closure Area. This restriction does not apply to a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Northeast Closure Area is bounded by straight lines connecting the following points in the order stated:

NORTHEAST CLOSURE AREA

Point	N. lat.	W. long.
NE1	44°27.3′	68°55.0′ (ME shoreline).
NE2	43°29.6′	68°55.0′
NE3	44°04.4′	67°48.7′
NE4	44°06.9′	67°52.8′
NE5	44°31.2′	67°02.7′
NE6	44°45.8′	67°02.7′ (ME shoreline).

(2) *Mid-Coast Management Area*—(i) *Area restrictions.* From September 15 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Mid-Coast Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to a single pelagic gillnet (as described and used as set forth in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Mid-Coast Management Area is the area bounded by straight lines connecting the following points in the order stated:

MID-COAST MANAGEMENT AREA

Point	N. lat.	W. long.
MC1	42°30.0′	70°50.1′ (MA shoreline).
MC2	42°30.0′	70°15.0′
MC3	42°40.0′	70°15.0′
MC4	42°40.0′	70°00.0′
MC5	43°00.0′	70°00.0′
MC6	43°00.0′	69°30.0′
MC7	43°30.0′	69°30.0′
MC8	43°30.0′	69°00.0′
MC9	44°17.8′	69°00.0′ (ME shoreline).

(iii) *Closing procedures.* According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close the western portion of the Mid-Coast Management Area (west of 70°15′ W. long.) from October through November annually by incorporating it into the Coastal Gulf of Maine Consequence Closure Area if, after two consecutive management seasons, the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings is exceeded by the average observed bycatch rate for the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas combined.

(3) *Massachusetts Bay Management Area*—(i) *Area restrictions.* From November 1 through February 28/29 and from April 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. From March 1 through March 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Massachusetts Bay Management Area. These restrictions do not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Massachusetts Bay Management Area is bounded by straight lines connecting the following points in the order stated:

MASSACHUSETTS BAY MANAGEMENT AREA

Point	N. lat.	W. long.
MB1	42°30.0′	70°50.1′ (MA shoreline).
MB2	42°30.0′	70°30.0′
MB3	42°15.0′	70°30.0′
MB4	42°15.0′	70°00.0′
MB5	42°00.0′	70°00.0′
MB6	42°00.0′	70°01.2′ (MA shoreline).
MB7	42°00.0′	70°04.8′ (MA shoreline).
MB8	42°00.0′	70°42.2′ (MA shoreline).

(iii) *Closing procedures.* According to paragraphs (d)(1), (3), and (4) of this section, NMFS shall close a portion of the Massachusetts Bay Management Area (north of 42°15′ N. lat.) from October through November annually if, after two consecutive management seasons, the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings is exceeded by the average observed bycatch rate for the Massachusetts Bay, Mid-Coast, and Stellwagen Bank Management Areas combined.

(4) *Stellwagen Bank Management Area*—(i) *Area restrictions.* From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Stellwagen Bank Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Stellwagen Bank Management Area is bounded by straight lines connecting the following points in the order stated:

STELLWAGEN BANK MANAGEMENT AREA

Point	N. lat.	W. long.
SB1	42°30.0′	70°30.0′
SB2	42°30.0′	70°15.0′
SB3	42°15.0′	70°15.0′
SB4	42°15.0′	70°30.0′
SB1	42°30.0′	70°30.0′

(iii) *Closing procedures.* According to paragraphs (d)(1), (d)(3), and (d)(4) of this section, NMFS shall close the Stellwagen Bank Management Area from October through November annually if, after two consecutive management seasons, the target harbor porpoise bycatch rate of 0.031 harbor porpoises per metric tons of landings is exceeded by the average observed bycatch rate for the Stellwagen Bank, Mid-Coast, and Massachusetts Bay Management Areas combined.

(5) *Southern New England Management Area*—(i) *Area restrictions.* From December 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Southern New England Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This prohibition does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Southern New England Management Area is bounded by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND MANAGEMENT AREA

Point	N. lat.	W. long.
SNE1	Western boundary as specified [1]	
SNE2	40°00.0′	72°30.0′
SNE3	40°00.0′	69°30.0′
SNE4	42°15.0′	69°30.0′
SNE5	42°15.0′	70°00.0′
SNE6	41°58.3′	70°00.0′ (MA shoreline).

[1] Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30.0′ W. long.

(iii) *Closing procedures.* According to paragraphs (d)(2), (d)(3), and (d)(4) of this section, NMFS shall close two areas (Cape Cod South Expansion Closure Area and Eastern Cape Cod Closure Area) within the Southern New England Management Area from February through April annually if, after two consecutive management seasons, the target harbor porpoise bycatch rate of 0.023 harbor porpoises per metric tons of landings is exceeded by the average observed bycatch rate for the Southern New England Management Area.

(6) *Cape Cod South Closure Area*—(i) *Area restrictions.* From March 1 through March 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cape Cod South Closure Area. This prohibition does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Cape Cod South Closure Area is bounded by straight lines connecting the following points in the order stated:

CAPE COD SOUTH CLOSURE AREA

Point	N. lat.	W. long.
CCS1	41°19.6′	71°45.0′ (RI shoreline).
CCS2	40°40.0′	71°45.0′
CCS3	40°40.0′	70°30.0′
CCS4	41°20.9′	70°30.0′
CCS5	41°23.1′	70°30.0′
CCS6	41°33.1′	70°30.0′ (MA shoreline).

(iii) *Closing procedures.* According to paragraphs (d)(2), (d)(3), and (d)(4) of this section, NMFS shall close the Cape Cod South Closure Area and an area to its south (Cape Cod South Expansion Closure Area) from February through April annually if, after two consecutive management seasons, the target harbor porpoise bycatch rate of 0.023 harbor porpoises per metric tons of landings is exceeded by the average observed bycatch rate for the Southern New England Management Area.

(7) *Offshore Management Area*—(i) *Area restrictions.* From November 1 through May 31, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Offshore Management Area, unless the gillnet gear is equipped with pingers in accordance with paragraphs (b) and (c) of this section. This restriction does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Offshore Management Area is bounded by straight lines connecting the following points in the order stated:

OFFSHORE MANAGEMENT AREA

Point	N. lat.	W. long.
OFS1	42°50.0′	69°30.0′
OFS2	43°10.0′	69°10.0′
OFS3	43°10.0′	67°40.0′
OFS4	43°05.8′	67°40.0′ (EEZ boundary).
OFS5	42°53.1′	67°44.5′ (EEZ boundary).
OFS6	42°47.3′	67°40.0′ (EEZ boundary).
OFS7	42°10.0′	67°40.0′
OFS8	42°10.0′	69°30.0′
OFS1	42°50.0′	69°30.0′

(8) *Cashes Ledge Closure Area*—(i) *Area restrictions.* During the month of February, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cashes Ledge Closure Area. This restriction does not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title).

(ii) *Area boundaries.* The Cashes Ledge Closure Area is bounded by straight lines connecting the following points in the order stated:

CASHES LEDGE CLOSURE AREA

Point	N. lat.	W. long.
CL1	42°30.0′	69°00.0′
CL2	42°30.0′	68°30.0′
CL3	43°00.0′	68°30.0′
CL4	43°00.0′	69°00.0′
CL1	42°30.0′	69°00.0′

(b) *Pingers*—(1) *Pinger specifications.* For the purposes of this subpart, a pinger is an acoustic deterrent device which, when immersed in water, broadcasts a 10 kHz (plus or minus 2 kHz) sound at 132 dB (plus or minus 4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (plus or minus 15 milliseconds), and repeating every 4 seconds (plus or minus 0.2 seconds).

(2) *Pinger attachment.* An operating and functional pinger must be attached at each end of a string of gillnets and at the bridle of every net, or every 300 feet (91.4 m or 50 fathoms), whichever is closer.

(c) *Pinger training and authorization.* The operator of a vessel may not fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies in closed areas where pingers are required as specified under

paragraph (b) of this section, unless the operator has satisfactorily received pinger training and possesses and retains on board the vessel a valid pinger training authorization issued by NMFS.

(d) *Annual review for consequence area actions.* (1) *Coastal Gulf of Maine Closure Area.* (i) *Establishment.* If, after two consecutive management seasons, the calculated average observed bycatch rate of the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas exceeds the target bycatch rate of 0.031 harbor porpoises per metric tons of landings, the Coastal Gulf of Maine Closure Area shall be established.

(ii) *Restrictions.* From October 1 through November 30, it will be prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Coastal Gulf of Maine Closure Area. This prohibition will not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). When not closed during October and November, the requirements of the Mid-Coast (as described in paragraph (a)(2) of this section), Massachusetts Bay (as described in paragraph (a)(3) of this section), and Stellwagen Bank (as described in paragraph (a)(4) of this section) Management Areas will remain in effect.

(iii) *Area boundaries.* The Coastal Gulf of Maine Closure Area is bounded by straight lines connecting the following points in the order stated:

COASTAL GULF OF MAINE CLOSURE AREA

Point	N. lat.	W. long.
CGM1	43°33.0′	70°15.0′ (ME shoreline).
CGM2	42°15.0′	70°15.0′
CGM3	42°15.0′	70°46.0′ (MA shoreline).

(2) *Cape Cod South Expansion and Eastern Cape Cod Closure Areas*—(i) *Establishment.* If, after two consecutive management seasons, the calculated average observed bycatch rate of the Southern New England Management Area exceeds the target bycatch rate of 0.023 harbor porpoises per metric tons of landings, the Cape Cod South Expansion Closure Area and the Eastern Cape Cod Closure Area shall be established.

(ii) *Restrictions.* From February 1 through April 30, it will be prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from the Cape Cod South Expansion Closure Area and the Eastern Cape Cod Closure Area. This prohibition will not apply to a single pelagic gillnet (as described in § 648.81(f)(2)(ii) of this title). When not closed during February through April, the requirements of the Southern New England Management Area, as described in paragraph (a)(5) of this section, will remain in effect.

(iii) *Area boundaries.* (A) The Cape Cod South Expansion Closure Area is bounded by straight lines connecting the following points in the order stated:

CAPE COD SOUTH EXPANSION CLOSURE AREA

Point	N. lat.	W. long.
CCSE1	41°19.6′	71°45.0′ (RI shoreline).
CCSE2	40°00.0′	71°45.0′
CCSE3	40°00.0′	70°00.0′
CCSE4	40°30.0′	70°00.0′
CCSE5	40°30.0′	70°30.0′
CCSE6	41°20.9′	70°30.0′
CCSE7	41°23.1′	70°30.0′
CCSE8	41°33.1′	70°30.0′ (MA shoreline).

(B) The Eastern Cape Cod Closure Area is bounded by straight lines connecting the following points in the order stated:

EASTERN CAPE COD CLOSURE AREA

Point	N. lat.	W. long.
ECC1	41°58.3′	70°00.0′ (MA shoreline).
ECC2	42°15.0′	70°00.0′
ECC3	42°15.0′	69°30.0′
ECC4	41°40.0′	69°30.0′
ECC5	41°40.0′	69°56.8′ (MA shoreline).

(3) *Notification.* Upon determining that establishing a consequence closure area as described in paragraphs (d)(1) and (d)(2) of this section is necessary, NMFS will notify, in advance of the closure, the Harbor Porpoise Take Reduction Team as well as gillnet permit holders through mail notification. NMFS will also publish notification in the **Federal Register** and post information on the Harbor Porpoise Take Reduction Plan Web site related to the establishment of the closure area(s).

(4) If any or all of the closure areas discussed in paragraphs (d)(1) and (d)(2) are implemented, NMFS will monitor harbor porpoise bycatch rates throughout the New England region. The provisions set forth in paragraphs (d)(1) and (d)(2) shall remain in effect each year after implementation until bycatch levels approach a zero mortality and serious injury rate or NMFS, in collaboration with the Harbor Porpoise Take Reduction Team, develops and implements new measures.

(e) *Research permits.* An exemption to the requirements set forth in this section may be acquired for the purposes of conducting scientific or gear research within the restricted areas described in this section. A scientific research permit must be acquired through NMFS' existing permit application process administered by NMFS.

(f) *Other special measures.* The Assistant Administrator may revise the requirements of this section through notification published in the **Federal Register** if:

(1) NMFS determines that pinger operating effectiveness in the commercial fishery is inadequate to reduce bycatch below the stock's PBR level.

(2) NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications (including pingers) are not reducing bycatch to below the PBR level.

5. Section 229.34 is revised to read as follows:

§ 229.34 Harbor Porpoise Take Reduction Plan Regulations—Mid-Atlantic.

(a)(1) *Regulated waters.* The regulations in this section apply to all waters in the Mid-Atlantic bounded on the east by 72°30′ W. long. at the southern coast of Long Island, NY at 40°50.1′ N. lat. and on the south by the North Carolina/South Carolina border (33°51.1′ N. lat.), except for the areas exempted in paragraph (a)(2) of this section.

(2) *Exempted waters.* The regulations within this section are not applicable to waters landward of the first bridge over any embayment, harbor, or inlet, or to waters landward of the following lines:

New York

40°45.70′ N., 72°45.15′ W. to 40°45.72′ N., 72°45.30′ W. (Moriches Bay Inlet)
40°37.32′ N., 73°18.40′ W. to 40°38.00′ N., 73°18.56′ W. (Fire Island Inlet)
40°34.40′ N., 73°34.55′ W. to 40°35.08′ N., 73°35.22′ W. (Jones Inlet)

New Jersey/Delaware

39°45.90′ N., 74°05.90′ W. to 39°45.15′ N., 74°06.20′ W. (Barnegat Inlet)
39°30.70′ N., 74°16.70′ W. to 39°26.30′ N., 74°19.75′ W. (Beach Haven to Brigantine Inlet)
38°56.20′ N., 74°51.70′ W. to 38°56.20′ N., 74°51.90′ W. (Cape May Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line

(International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Delaware Bay)

Maryland/Virginia

38°19.48′ N., 75°05.10′ W. to 38°19.35′ N., 75°05.25′ W. (Ocean City Inlet)

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80. (Chincoteague to Ship Shoal Inlet)

37°11.10′ N., 75°49.30′ W. to 37°10.65′ N., 75°49.60′ W. (Little Inlet)

37°07.00′ N., 75°53.75′ W. to 37°05.30′ N., 75°56′ W. (Smith Island Inlet)

North Carolina

All marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80.

(b) *Restrictions*—(1) *Waters off New Jersey Management Area.* The Waters off New Jersey Management Area is bounded by straight lines connecting the following points in the order stated:

WATERS OFF NEW JERSEY MANAGEMENT AREA

Point	N. lat.	W. long.
WNJ1	40°50.1′	72°30.0′ (NY shoreline).
WNJ2	38°47.0′	72°30.0′
WNJ3	38°47.0′	75°05.0′ (DE shoreline).

(i) *Closure.* From April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Waters off New Jersey Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From January 1 through April 30, except during April 1 through April 20 as described in paragraph (b)(1)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Waters off New Jersey Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Waters off New Jersey Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 4,800 ft (1,463.0 m).

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.44 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel, or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 16.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From January 1 through April 30, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Waters off New Jersey Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Waters off New Jersey Management Area with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system.* Tie-downs are prohibited.

(2) *Mudhole North Management Area.* The Mudhole North Management Area is bounded by straight lines connecting the following points in the order stated:

MUDHOLE NORTH MANAGEMENT AREA

Point	N. lat.	W. long.
MN1	40°28.1′	74°00.0′ (NJ shoreline).
MN2	40°30.0′	74°00.0′
MN3	40°30.0′	73°20.0′
MN4	40°05.0′	73°20.0′
MN5	40°05.0′	74°02.0′ (NJ shoreline).

(i) *Closures.* From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large or small mesh gillnet gear from the Mudhole North Management Area. In addition, from April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Mudhole North Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From January 1 through April 30, except during February 15 through March 15 and April 1 through April 20 as described in paragraph (b)(2)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Mudhole North Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Mudhole North Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,900 ft (1,188.7 m).

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.44 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From January 1 through April 30, except during February 15 through March 15 as described in paragraph (b)(2)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Mudhole North Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Mudhole North Management Area with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system.* Tie-downs are prohibited.

(3) *Mudhole South Management Area.* The Mudhole South Management Area is bounded by straight lines connecting the following points in the order stated:

MUDHOLE SOUTH MANAGEMENT AREA

Point	N. lat.	W. long.
MS1	40°05.0′	73°31.0′
MS2	40°05.0′	73°00.0′
MS3	39°51.0′	73°00.0′
MS4	39°51.0′	73°31.0′
MS1	40°05.0′	73°31.0′

(i) *Closures.* From February 1 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large or small mesh gillnet gear in the Mudhole South Management Area. In addition, from April 1 through April 20, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from the Mudhole South Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From January 1 through April 30, except during February 1 through March 15 and April 1 through April 20 as described in paragraph (b)(3)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Mudhole South Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Mudhole South Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,900 ft (1,188.7 m).

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.44 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From January 1 through April 30 of each year, except during February 1 through March 15 as described in paragraph (b)(3)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Mudhole South Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Mudhole South Management Area with small mesh gillnet gear on board unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,000 ft (914.4 m) in length.

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 10.

(F) *Tie-down system.* Tie-downs are prohibited.

(4) *Southern Mid-Atlantic Management Area.* The Southern Mid-Atlantic Management Area is bounded by straight lines connecting the following points in the order stated:

SOUTHERN MID-ATLANTIC MANAGEMENT AREA

Point	N. lat.	W. long.
SMA1	38°47.0′	75°05.0′ (DE shoreline).
SMA2	38°47.0′	72°30.0′
SMA3	33°51.1′	72°30.0′
SMA4	33°51.1′	78°32.5′ (NC/SC border).

(i) *Closures.* From February 15 through March 15, it is prohibited to fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear from

the Southern Mid-Atlantic Management Area.

(ii) *Gear limitations and requirements—large mesh gillnet gear.* From February 1 through April 30, except during February 15 through March 15 as described in paragraph (b)(4)(i) of this section, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any large mesh gillnet gear in the Southern Mid-Atlantic Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Southern Mid-Atlantic Management Area with large mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is not more than 3,900 ft (1,188.7 m) in length.

(B) *Twine size.* The twine is at least 0.035 inches (0.90 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 80.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 13.

(F) *Tie-down system.* The gillnet gear is equipped with tie-downs spaced not more than 24 ft (7.3 m) apart along the floatline, and each tie-down is not more than 48 inches (18.90 cm) in length from the point where it connects to the floatline to the point where it connects to the lead line.

(iii) *Gear limitations and requirements—small mesh gillnet gear.* From February 1 through April 30, no person may fish with, set, haul back, possess on board a vessel unless stowed in accordance with § 229.2, or fail to remove any small mesh gillnet gear in the Southern Mid-Atlantic Management Area unless the gear complies with the specified gear characteristics described below. During this period, no person who owns or operates the vessel may allow the vessel to enter or remain in the Southern Mid-Atlantic Management Area with small mesh gillnet gear on board, unless the gear complies with the specified gear characteristics described below or is stowed in accordance with § 229.2. In order to comply with these specified gear characteristics, the gear must have all the following characteristics:

(A) *Floatline length.* The floatline is no longer than 2,118 ft (645.6 m).

(B) *Twine size.* The twine is at least 0.031 inches (0.81 mm) in diameter.

(C) *Size of nets.* Individual nets or net panels are not more than 300 ft (91.4 m or 50 fathoms) in length.

(D) *Number of nets.* The total number of individual nets or net panels for a vessel, including all nets on board the vessel, hauled by the vessel or deployed by the vessel, does not exceed 45.

(E) *Number of nets per string.* The total number of nets or net panels in a net string does not exceed 7.

(F) *Tie-down system.* Tie-downs are prohibited.

(c) *Research permits.* An exemption to the requirements set forth in this section may be acquired for the purposes of conducting scientific or gear research within the restricted areas described in this section. A scientific research permit must be acquired through NMFS' existing permit application process administered by NMFS.

(d) *Other special measures.* The Assistant Administrator may revise the requirements of this section through notification published in the **Federal Register** if NMFS determines that the boundary or timing of a closed area is inappropriate, or that gear modifications are not reducing bycatch to below the stock's PBR level.

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H.R. 1777/P.L. 111–39

To make technical corrections to the Higher Education Act of 1965, and for other purposes. (July 1, 2009; 123 Stat. 1934)

S. 614/P.L. 111–40

To award a Congressional Gold Medal to the Women Airforce Service Pilots (''WASP''). (July 1, 2009; 123 Stat. 1958)

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